

European Union Measures against Iran - Council Regulation 267/2012 dated 23 March 2012 - Frequently Asked Questions – Updated on 15 August 2012

Background

On 23 January 2012 The European Union Foreign Affairs Council agreed to introduce further measures impacting on trade that would or could support the furtherance of the Government of Iran's nuclear aspirations. Specifically the Council introduced measures to prohibit the trade and transportation of crude oil, petroleum products and petrochemical products. Those measures were set out in **Council Decision 2012/35**. On 23 March 2012 the Council issued **Regulation 267/2012** implementing the provisions of the Decision and repealing **Regulation 961/2010**. The Group has since engaged in a process of ongoing correspondence and dialogue with the UK Treasury and the UK Business Department, to discuss the interpretation and application of the Regulation.

The following FAQs should be read in conjunction with, but supersede, the FAQs issued on 8 February 2012, 27 March 2012 and 25 May 2012 and cover the following current issues;

- The legal Status of EU Council Regulation 267/2012;
- The expired "grace periods";
- Impact on shipowners. For the purpose of these FAQs, the term shipowners includes charterers, with the sanctions potentially applying equally to both.
- Impact on the cover provided by clubs

It should also be noted that these FAQs address solely the ramifications of Council Regulation 267/2012 and do not address other nationally or internationally applicable sanctions measures which may impact on trade to and from Iran and the provision of insurance and reinsurance cover in relation thereto.

1. What is the legal status of the Regulation?

Regulation 267/2012 became effective on 24 March 2012 and gives effect, subject to the modifications therein, to **Council Decision 2012/35**. It also repeals and replaces **Regulation 961/2010**. The provisions of the Regulation, in so far as these relate to the shipment of Iranian crude oil, petroleum and petrochemical cargoes and the insurance arrangements relating thereto, are effective from the dates stipulated in the Regulation, in particular in the provisions contained in Articles 11 – 14.

2. What is the effect of the expiration of the "grace periods" provided for in Articles 12 and 14 in the Regulation?

The Regulation contained two "grace periods" for the continuation of the performance of contracts which were concluded **prior to 23 January 2012**:

- (i) For petro-chemical products, until 1 May 2012, and
- (ii) For crude and petroleum products, until 1 July 2012.

The grace periods expired at 23:59 on 30 April 2012 and 23:59 on 30 June 2012 respectively and no longer apply except in respect of contracts that are subject to Regulation 267/2012, articles 12.1(b) and 14.1(b). These provisions allow for pre 23 January 2012 contracts and their ancillary contracts (necessary for the execution of such contracts) to continue where the crude, petroleum or petrochemical cargo or proceeds derived from their supply is for reimbursement of outstanding amounts to persons, entities or bodies under the jurisdiction of EU Member States.

Articles 12.1(c) and 14.1(c) provide exceptions from the prohibitions on the purchase, import or transport of defined crude oil, petroleum products and petrochemical products, providing the products had been exported from Iran prior to 23 January 2012, or where the export was made pursuant to a pre 23 January trade contract or contract ancillary thereto during the grace periods, or where the export was made under the article 12.1(b) and 14.1(b) exceptions referred to above.

The performance of contracts referred to in the exceptions in articles 12.1 (b) and (c) and 14.1 (b) and (c) are subject to the following notification requirements.

Notification Requirements

Provisions are included in the Regulation which require the contractual performing party to give a minimum 20 working days' notice of the activity or transaction to the competent authority of its Member State. There remains some ambiguity in the drafting regarding which contracts are intended to be covered by this notification requirement and whether this would extend to ancillary contracts such as transportation contracts. The prudent approach would be to assume that the requirement applies to an EU shipowner transporting Iranian crude oil, petroleum or petrochemical products to EU or other destinations. In practice this could give rise to problems where late notification of, or change of, voyage orders prevent a shipowner from giving the requisite minimum notice. In such circumstances shipowners should give as much notice as possible to the relevant Member State competent authority of the intended activity or transaction. It does not appear that this notice requirement would extend to a shipowner which is not established in an EU member state.

The notification requirement does not, however, apply in relation to P&I insurance or reinsurance cover arrangements.

3. How will the relevant prohibitions in the Regulation impact on shipowners?

Since the grace periods ended on 1 May 2012 and 1 July 2012, unless one of the limited exemptions set out in FAQ 2 applies, it is prohibited for EU regulated shipowners to purchase, import or transport Iranian crude oil, petroleum products and petro-chemical products regardless of the place of loading, and non-Iranian crude oil, petroleum products and petro-chemical products that are being exported from Iran.

Non-EU regulated shipowners may continue to transport Iranian crude oil, petroleum and petrochemical products, but only to non-EU destinations, subject always to any other applicable sanctions legislation.

The prohibitions are specific to the named cargoes and do not generically refer to LNG and LPG (liquefied petroleum gas) cargoes. Annex V to the Regulation (list of "petrochemical products") does refer to ethylene, propylene and butadiene, elements of which may be found in LPG cargoes so if such cargoes are being contemplated for loading it would be prudent to request product analysis details and to ascertain whether the cargo does contain any of the prohibited products identified in Annex V.

4. Is there a defence under the Regulations?

Regulation 267/2012, article 42.2 provides "the measures set out in the present regulations shall not give rise to liability of any kind on the part of the natural or legal persons, entities or bodies concerned, if they did not know, and had no reasonable cause to suspect that their actions would infringe these prohibitions". To date, what constitutes sufficient evidence to allow shipowners to rely on this defence is untested. It is recommended that shipowners exercise due diligence in identifying the source of cargoes to ensure they are not subject to sanctions.

5. How will the insurance and reinsurance prohibitions in the Regulation impact on P&I cover?

All International Group clubs have included within their rules either express sanctions cover termination or exclusion provisions or imprudent or improper trading exclusion provisions. The effect of those rules is to withdraw or exclude insurance cover or preclude recovery in relation to liabilities incurred whilst a vessel is performing sanctions or prohibition offending voyages. To the extent that a shipowner undertakes such a voyage, his liabilities will not be insured by his International Group Club. If in doubt, members should liaise with their club to clarify the precise nature of that club's rule(s) on sanctions.

Not all International Group clubs are incorporated, domiciled or regulated within the EU. In relation to the shipment of the prohibited Iranian cargoes or cargoes being exported from Iran for delivery inside or outside the EU, how will the amended measures relating to third party liability and environmental liability insurance and reinsurance, apply to EU and non-EU regulated clubs?

(i) Cargoes for delivery within the EU

EU and non-EU regulated Clubs may not provide cover to EU and non-EU shipowners save where one of the limited exemptions referred to in FAQ 2 and set out in articles 12.1 (b) and (c) and 14.1 (b) and (c) applies.

(ii) Cargoes for delivery outside the EU

(a) EU regulated clubs

The purchase, import or transportation of the prohibited Iranian cargoes or cargoes which have been imported from Iran outside the EU by a non-EU shipowner will not contravene the Regulation. However, insurance and reinsurance cover relating to such purchase, import or transportation provided by EU domiciled or regulated insurers and/or reinsurers is prohibited under the Regulation and (e.g. for carrying shipowners) such transportation would trigger the clubs' sanctions cover exclusions. It is therefore prudent for shipowners to seek advice from their club before agreeing to fix voyages of products that fall within the scope of the Regulation and its annexes.

(b) Non-EU regulated clubs

The International Group clubs which are not EU regulated will not be directly subject to the insurance prohibitions contained in the Regulation.

However, the non-EU clubs' rights of recovery under the International Group pooling arrangements from clubs which are EU regulated will be impaired, and rights of recovery under the International Group Reinsurance Contract and other reinsurances taken out for the benefit of the clubs' members will also be impaired. This is because the EU clubs and any EU based participant in the International Group Reinsurance Contract will be subject to the sanctions, which will prohibit payment out by those entities to the non-EU club. As a result, the non-EU regulated International Group clubs have incorporated provisions in their rules to exclude cover where, as a result of sanctions measures, the pool and/or reinsurers are themselves subject to prohibitions on cover/payment.

6. Bunkers

Although the provisions of the Regulation do not expressly extend the prohibitions on transportation and insurance to oil or petroleum products used as ship's bunker fuel or to lube oils, the generic descriptions of oil and petroleum products could include bunker fuels and lube oils. To date, based on the advice received from the UK's Treasury Department, shipowners have been advised to exercise diligence e.g. to make enquiries regarding the origin of bunker fuel and lube oil supplied to their vessels and to avoid stemming Iranian fuels and oils.

In response to requests for further clarification made to the UK's Competent Authorities, they have now indicated their view that fuel oil and lube oils used for the purposes of propulsion of the ship and the operation of the vessel's machinery (i.e. not fuel oil or lube oils carried as cargo) would not trigger the prohibitions contained in the Regulation. This interpretation would be consistent with the presumed intention behind the express exemption (contained in Annex IV) from the prohibitions in relation to aviation fuel of Iranian origin. The UK's views are not legally binding, however, and it should particularly be borne in mind that they may not be shared by the Competent Authorities of other EU Member States.

It is, therefore, recommended that shipowners should continue to exercise due diligence in identifying the source of bunker fuel stems and lube oil where there are grounds to suspect that these may be of Iranian origin and where possible to avoid Iranian stems.

7. Cargo residues and Slops

In response to enquiries the UK Competent Authorities have confirmed that the presence on board of Iranian oil or petroleum product residues in cargo tanks or in slops would not contravene the Regulation.

8. Containerized cargo (e.g. fuel oil in flexi-bags)

See FAQ 4 above. Shipowners are recommended to check the details provided by shippers and their agents in respect of containerised cargo to ensure those cargoes (as declared) are not subject to sanctions. Particular attention should be given to containerised cargo originating from Iran. It has not been suggested that shipowners have a positive duty to open and inspect every container originating from Iran to verify their contents, but it is recommended that shipowners exercise due diligence when dealing with Iranian cargoes and entities.

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