

## EU Sanctions against Russia – Impact on shipping & marine insurance

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### I. Introduction.

#### • Meaning of Sanctions.

Sanctions are an essential tool in the EU's common foreign and security policy (CFSP), through which the EU can intervene where necessary to prevent conflict or respond to emerging crisis; EU restrictive measures are not punitive, they are intended to bring about a change in policy or activity by targeting non-EU countries, as well as entities and individuals, responsible for the malign behaviour at stake , .

#### • Implementation. The EU

applies sanctions in order to:

- Promote international peace and security.
- Prevent conflicts.
- Support human rights.
- Defend international law.

The sanctions may target governments of non-EU countries, as well as companies, groups, individuals through:

- Travel Bans.
- Embargoes.
- Asset freeze.
- Restrictions on imports/exports.
- (Competent Directorate).

The proposals for Regulations on sanctions for adoption by the Council of the European Union are prepared by the Directorate General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

### II. The applicable regime.

#### • (Regulation).

The European Council's Regulation (EU) no. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine is in force, as it is amended, and is currently (10 October 2022) consolidated ("the Sanctions Regulation").

### III. Impact on Ports- Trade & Insurance.

#### • Access to Ports.

Any attempt to circumvent the sanctions by the change of the flag of the vessel could be identified by the port authorities through a check of the IMO number of the vessel• in addition, under SOLAS, the ships are also obliged to keep on board the synopsis report with the history of change of flags. Also, port authorities have access to the above monitoring system. Furthermore, ship-to-ship operation can occur between a Russian flagged vessel and a third country flagged vessel in international waters, a ship-to-ship operation between Russian and EU-flagged vessels, and a Russian flagged vessel and third-country flagged vessel in territorial waters of a Member State. If a ship-to-ship operation takes place with the objective to circumvent the prohibition of article 3ae of the Regulation, such an operation is caught by the non-circumvention clause of Article 12. The determining element is that such ship-to-ship operation is orchestrated in order for a vessel that is not subject to the port access ban to call in an EU port, where otherwise a Russian flagged vessel could not call in. Where a vessel has been authorized to call on a port in order to unload goods subject to derogation, it must obtain a separate authorization. Russian flagged recreational ships that were berthed in the port of a Member State before 16 April 2022 do not fall under the scope of the prohibition since their sole presence does not amount to access into a Union port; however, leaving a Union

port, any request to return would result in calling into a Union port and be prohibited under Article 3ea .

#### • Oil imports-Reporting obligations under the oil import restrictions-Export restrictions on maritime navigation goods and technology-Export related restrictions.

Article 3m of the Regulation prohibits, subject to certain exceptions and derogations, imports of goods set out in Annex XXV , if such goods originate from Russia . It is therefore necessary to determine, if the product originates from Russia. EU operators and national authorities must conduct appropriate due diligence before purchasing goods listed in Annex XXV from other Member States, which benefit from the exceptions laid down in Article 3m(3)(d) (crude imports by pipeline), or from specific derogations (for Bulgaria and Croatia). When purchasing such goods, they should do the necessary checks to ensure that such goods do not originate from Russia, are not exported from Russia or are not petroleum products (CN 2709 10), which are obtained from crude oil originated or exported from Russia. However, the purchase of Russian seaborne crude oil by an EU company is allowed, when the goods are exported from Russia towards a third country and are not transiting Union territory. Furthermore, the aim of the reporting obligation is to monitor the flows of oil still entering the EU after the ban on seaborne oil established with the 6th sanctions package adopted on 3 June 2022 . The data provided by Member States will remain confidential except for some high level aggregated numbers referring to the total EU level of oil imports. It is prohibited to sell, supply, transfer or export certain maritime navigation goods and technology (paragraph 1 of Article 3f of Sanctions Regulation), related technical assistance, brokering services or other services related to those above, directly or indirectly, to any natural or legal person, entity or body in Russia, or for use in Russia (paragraph 2(a) of article 3f of Sanctions Regulation)•however, if the intended end-use of the marine navigation and radio communication equipment falls under the scope of maritime safety, the exporter may apply for an authorization and a case-by case assessment is made by the competent authority of the Member State in which the exporter is resident or established• this is also applicable for the related technical or financial assistance.

#### • Insurance & Reinsurance.

It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI of the Sanctions Regulation to any person, entity or body in Russia or for use in Russia . After a wind down period of 6 months, during which contracts signed before 4 June 2022 can still be executed until December 5, EU operators will be prohibited from insuring and financing the maritime transport of goods set out in Annex XXV to third countries , .

#### • Execution of Contracts & Claims.

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under the Sanctions Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by: (a) legal persons, entities or bodies listed in the Annexes to this Regulation or legal persons, entities or bodies established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by them; (b) any other Russian person, entity or body; (c) any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited, shall be on the person seeking the enforcement of that claim , .