New European Union Measures against Iran - Council Regulation 267/2012 dated 23 March 2012 - Frequently Asked Questions – Updated on 25 May 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 has introduced new measures to prohibit the trade and transportation of crude oil, petroleum products and petrochemical products. The new 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 corresponded and met with the UK Treasury to discuss the interpretation and application of the Regulation.

The FAQs which follow, and which should be read in conjunction with the FAQs issued on 8 February 2012, substitute the FAQs issued on 27 March 2012 and cover the following current issues;

- The legal Status of EU Council Regulation 267/2012;
- The effect of the "grace periods";
- Impact on shipowners,
- Impact on the cover provided by clubs

It should also be noted that the 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?

The Regulation is effective from 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 "grace periods" provided for in Articles 12 and 14 in the Regulation?

The Regulation reaffirms the 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.

In the absence of definitive guidance, it should be assumed that the grace periods will expire at 2359 on 30 April and 2359 on 30 June respectively.

The provisions contained in the Decision relating to ancillary contracts remain unaltered.

New carve-outs are provided in relation to the provision, directly or indirectly, of third party liability insurance and environmental liability insurance and reinsurance until 1 July 2012 (in respect of Iranian crude oil and / or petroleum products) and 1 May 2012 (in respect of Iranian petrochemicals). P&I insurance will fall within the scope of these carve outs.

The effect of these carve-outs is to make it clear that as an exception to the general prohibition in Articles 11 and 13 on the provision of insurance and reinsurance related to the import, purchase or transport of crude oil petroleum products and petrochemical products respectively, P&I cover may continue to be provided but only up to 1 July 2012 in respect of the insurance and reinsurance of the transportation of Iranian crude oil and petroleum products and 1 May 2012 in respect of transportation of petrochemicals, and always subject to the provisions of Articles 12 and 14 (which are addressed under question 3 below).

It is important to note that the new exception to the general prohibition on insurance and reinsurance only applies up to the respective cut off dates, and that the prohibited cargoes must be discharged, and/or Iranian bunkers consumed, before the end of the carve-out periods to avoid any possibility of contravening a club's sanctions rules.

New 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 but the prudent approach would be to assume that the requirement would apply to an EU shipowner transporting 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.

Following the inclusion of the new carve-out in relation to third party liability insurance and environmental liability insurance and reinsurance cover noted above, the minimum 20 working days notification requirement will 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

The relevant wordings in Articles 12 and 14 of the Regulation permit the continuing import or transport by EU regulated shipowners of crude oil, petroleum products and petro-chemical products loaded or originating in Iran beyond the entry into force of the Regulation up to the respective cut off dates of 1 July 2012 and 1 May 2012 always provided these are pursuant to pre 23 January 2012 contracts (or pursuant to contracts ancillary thereto). The import or transport by EU shipowners pursuant to post 23 January 2012 contracts is prohibited. Transport would include carriage of fuel as bunkers.

Non-EU regulated shipowners may also continue to transport such cargoes or bunkers for delivery in the EU subject to pre 23 January contractual arrangements (or pursuant to contracts ancillary thereto) up to the respective cut off dates. Thereafter non-EU shipowners may continue to transport such cargoes but only to non-EU destinations, subject always to any other applicable sanctions legislation.

The cargo 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.

Also, to the extent that vessels transporting such cargoes might take on Iranian bunker fuel, this could separately trigger trading and/or insurance prohibitions.

4. 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 cover 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.

Not all International Group clubs are incorporated, domiciled or regulated within the EU. In relation to the shipment of the prohibited cargoes originating from Iran for delivery inside and 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

Pursuant to Articles 12.2 and 14.2, EU and non-EU regulated clubs will continue to be able to provide cover to EU and non-EU shipowners until the relevant cut-off date of 1 July 2012 or 1 May 2012 respectively. Where however the transportation is pursuant to a post 23 January contract, the voyage would contravene the requirements of Article 12 and Article 14 of the Regulation (permitting only performance of pre-23 January 2012 contracts or contracts ancillary thereto) and would trigger clubs sanctions cover exclusions with the result that notwithstanding the carve-outs in Articles 12.2 and 14.2 shipowners will not be covered in relation to such voyages.

(ii) Cargoes for delivery outside the EU

(a) EU regulated clubs

Pursuant to Articles 12.2 and 14.2, EU and non-EU regulated clubs will continue to be able to provide cover to EU and non-EU shipowners until the relevant cut-off date of 1 July 2012 or 1 May 2012 respectively. Where however the transportation is pursuant to a post 23 January contract and is performed by an EU shipowner, the voyage itself would contravene the requirements of Article 12 and Article 14 of the Regulation (permitting only performance of pre-23 January 2012 contracts or contracts ancillary thereto) and would trigger clubs sanctions cover exclusions with the result that notwithstanding the carve-outs in Articles 12.2 and 14.2, shipowners will not be covered in relation to such voyages. If however the transportation is pursuant to a post 23 January contract, and is performed by a non-EU shipowner and the cargo is not destined for the EU, such voyage will not contravene the Regulation and insurance and reinsurance cover may continue to be provided up to the relevant cut-off date but not beyond.

(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. In relation to cover provided by such clubs to EU and non-EU owned or flagged vessels trading prior to the relevant cut-off date with prohibited cargoes to the EU, such transportation, provided pursuant to a pre-23 January 2012 contract would be permissible and would not trigger the club's sanctions cover exclusion provisions. Where however the transportation is pursuant to a post 23 January contract, the voyage would contravene the requirements of Article 12 and Article 14 of the Regulation and cover would be impaired by operation of the clubs sanctions cover exclusions as noted under paragraph (a) above.

Furthermore, even where the transportation does not breach the provisions of the Regulation (e.g. in the case of a voyage by a non-EU owned or flagged vessel to a non-EU destination, whether pursuant to a pre-or post-23 January 2012 contract), the non-EU club's 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. The non-EU regulated International Group clubs have however 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.

5. Bunkers

Although the provisions of the Regulation do not specifically refer to bunkers, it is considered likely that these would fall within the generic descriptions of crude oil or petroleum products contained in Articles 11 with the result that if such bunkers are of Iranian origin, the prohibitions on purchase, import, transport and insurance would be triggered,

In the case of an EU shipowner the stemming of Iranian or Iranian blended bunkers whether in Iran or elsewhere would place the shipowner in breach of the prohibitions. Furthermore this would trigger the club sanctions cover exclusion.

In the case of a non-EU shipowner, the stemming of Iranian or Iranian blended bunkers will not place the shipowner in breach of prohibition (unless the vessel is trading within EU waters) but this would be sufficient to trigger the club sanctions cover exclusions as set out in paragraph 4 (b) above..

It is understood that Iranian or Iranian blended bunkers are stemmed at a number of ports/places outside Iran and in practice it may be difficult for a shipowner or his club to ascertain whether bunkers stemmed are of Iranian origin or blended with Iranian

oil. At a minimum shipowners should check to ensure that bunkers which they are stemming are not of Iranian or Iranian blended origin and where vessels are operated on time or bareboat charter to request charterers to exercise similar diligence. Article 42 of the Regulation expressly provides that the measures set out in the Regulation will not give rise to liability to persons or entities if they did not know and had no reasonable cause to suspect that their actions would infringe the prohibitions. In advance of stemming bunkers it would be prudent for shipowners/their charterers to make enquiries regarding the origin of the bunkers.

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