

New European Union Measures against Iran - Council Regulation 267/2012 dated 23 March 2012 - Frequently Asked Questions – issued on 27 March 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 FAQs which follow, and which should be read in conjunction with the FAQs issued on 8 February 2012, cover the following current issues;

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

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.

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

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. This requirement would apply to an EU shipowner transporting crude oil, petroleum or petrochemical products to EU or other destinations. It will not however apply in relation to insurance or reinsurance cover arrangements.

Two 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 exempt from the pre 23 January contractual execution requirement, third party liability, marine and environmental liability insurance and reinsurance cover, so that 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 petrochemicals) and not beyond. However existing Club Rules will operate to exclude recovery for liabilities incurred in the course of unlawful trading, for example in the case of Members subject to EU jurisdiction, liabilities incurred in the course of executing a trade contract involving a prohibited trade entered into after 23rd January 2012.

For Members wishing to take advantage of these carve outs it is important to note that the cargoes must be discharged and the voyage completed before the end of the carve out periods to avoid any possibility of contravening a club's sanctions rules.

3. How will the Regulation impact on the P&I cover provided by clubs?

(a) Trading prohibitions

The relevant wordings in Articles 12 and 14 of the Regulation permit the import or transport by EU regulated shipowners of Iranian crude oil, petroleum products and petro-chemical products which are covered by pre 23 January 2012 contracts (or pursuant to contracts ancillary thereto) up to the respective cut off dates of 1 July 2012 and 1 May 2012. Import or transport by EU shipowners pursuant to post 23 January 2012 contracts is prohibited.

Non-EU regulated shipowners may also continue to transport such cargoes 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 to non-EU destinations, subject always to any other applicable sanctions legislation.

The prohibitions contained in the Regulation are specific to the prescribed cargoes and do not purport, or operate, to interfere with insurance cover arrangements in respect of the import or transport of other cargoes.

All International Group clubs have included within their rules, in one form or another, either express sanctions cover termination or exclusion provisions or imprudent or improper/unlawful trading cover exclusion provisions. The effect of those rules will be to withdraw or exclude insurance cover in relation to 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.

(b) Insurance and reinsurance prohibitions

Not all International Group clubs are incorporated, domiciled or regulated within the EU.

(i) EU regulated clubs

As stated in question 2 above, clubs will be able to provide cover to EU and non-EU shipowners regardless of whether the transportation is pursuant to a pre or post 23 January 2012 contract and regardless of whether the destination of the cargo is within or outside the EU until the relevant cut-off date of 1 May or 1 July 2012. Thereafter they will not be able to provide cover.

(ii) Non-EU regulated clubs

The International Group clubs which are not EU regulated will not be subject to the insurance prohibitions contained in the Regulation. However, in relation to (i) cover provided to EU owned or flagged vessels trading with prohibited cargoes to the EU or elsewhere or (ii) in the case of a voyage by a non-EU owned or flagged vessel carrying a prohibited cargo to an EU destination, such trade will be in breach of the Regulation and would trigger the club's sanctions cover exclusion provisions. 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) the non-EU club's rights of recovery under the International Group pooling arrangements from clubs which are EU regulated will be affected, 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 affected. All Clubs in the International Group, including the non-EU regulated International Group clubs, have however incorporated provisions in their rules to exclude cover where,

and to the extent that, as a result of sanctions measures, the pool and/or reinsurers are themselves subject to prohibitions on cover/payment.