



International Oil Pollution
Compensation Funds

Agenda Item	IOPC/OCT22/4/4	
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Original	English	
1992 Fund Assembly	92A27	●
1992 Fund Executive Committee	92EC79	
Supplementary Fund Assembly	SA19	●

THE POTENTIAL IMPACT OF SANCTIONS ON THE INTERNATIONAL LIABILITY AND COMPENSATION REGIME

Note by the Secretariat

Summary:

In March 2022, the Director submitted document IOPC/MAR22/8/1 which contained at its Annex, a draft circular of the Legal Committee (IMO document LEG 109/16/1 paragraphs 5.14 and 5.15) containing guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. The draft LEG circular included information relevant to the IOPC Funds.

From 5 December 2022, pursuant to Articles 3m and 5aa of European Union (EU) Regulation 833/2014^{<1>} (the Regulation), further restrictions will come into effect which govern the carriage and insurance of Russian crude oil and products, and the prohibition of transactions with the entities listed in Annex XIX of the Regulation that are controlled by the Russian Federation, which may include potential shippers and contributors to the IOPC Funds^{<2>}.

As a result of the restriction on insurance of vessels carrying Russian crude oil and products, many of the International Group (IG) P&I Clubs will no longer be able to insure such vessels, meaning that the owners may need to seek insurance from other non-IG P&I Clubs.

Action to be taken:

1992 Fund Assembly and Supplementary Fund Assembly

- (a) Take note of the information contained within the document; and
- (b) provide instructions to the Director as the governing bodies may deem appropriate.

1 **Introduction**

- 1.1 The International Maritime Organization (IMO) Legal Committee convened from 21 to 25 March 2022 and agreed on the text for guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates. It was decided that the guidance should be issued as a circular of the Legal Committee (IMO document LEG 109/16/1 paragraph 5.14).

<1> Council of the European Union (EU) Regulation No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

<2> The Government of the United Kingdom has introduced similar restrictions by means of the Russia (Sanctions) (EU Exit) Regulations 2019, as amended.

- 1.2 IMO document LEG 109/WP.6, which set out the draft LEG circular containing the guidance, was reproduced at the Annex to document IOPC/MAR22/8/3 because the draft LEG circular included information relevant to the IOPC Funds.
- 1.3 As matters have progressed, further restrictions against the Russian Federation have been and will be implemented. From 5 December 2022, and pursuant to Article 3n^{<3>} of the Regulation, it is likely that many of the International Group (IG) P&I Clubs, which are subject to the jurisdiction of the European Union (EU), will no longer be able to insure vessels trading or carrying Russian crude oil. Furthermore, all of the IG P&I Clubs, including those that are domiciled outside the territory of the EU, rely on a reinsurance programme that is heavily dependent on the participation of reinsurers that are domiciled within the EU^{<4>}.

2 Possible impact upon the 1992 Fund

- 2.1 The 1992 Fund Convention and 2003 Supplementary Fund Protocol contain no exemptions from liability for sanctionable or sanctioned events. Whilst recognising that the IOPC Funds are inter-governmental organisations and are thus not subject to domestic or international sanction regulations and legislation, a number of practical difficulties may arise if dealing with an incident involving a vessel laden with Russian oil.

Sanctions-avoiding vessels

- 2.2 Since the introduction of the international sanctions, several newspaper articles have highlighted the high number of vessels which are attempting to circumvent the sanctions by various methods, for instance, by turning off their AIS transponders so as to disappear from coverage in order to conduct illegal ship-to-ship (STS) oil transfer operations, often in dangerous waters/the open sea, or in areas with little satellite coverage, thereby negating many of the IMO safety measures and putting coastlines at an increased risk of oil pollution.

Provision of insurance by non-IG insurers

- 2.3 With the likelihood that more shipowners will need to insure with non-IG insurers, there is a risk that some of these insurers may not be so willing to comply with their obligations under the 1992 Civil Liability Convention (CLC). This may mean that the 1992 Fund may have to pay additional compensation if a shipowner or its insurer fails to establish a limitation fund.

Banking restrictions

- 2.4 In addition, there are a number of practical issues that may arise if an incident occurs involving a vessel laden with Russian oil or within the Russian Federation itself. The international compensation regime functions by having funding available, collected from contributions paid by oil receivers and being able to pay compensation to victims of oil pollution swiftly. However, with the existence of the sanctions, many banks have refused to have any dealings with money destined for or originating from the

^{<3>} Article 3n of the Regulation prohibits the provision of, directly or indirectly, technical assistance, brokering services or financing or financial assistance, relating to the transport, including through ship-to-ship transfers, to third countries of crude oil or petroleum products as listed in Annex XXV which originate in Russia or which have been exported from Russia, subject to a number of exceptions relating to goods originating from third countries other than Russia or transiting through Russia, provided that both the origin and the owner of those goods are non-Russian.

^{<4>} If any of the IG P&I Clubs are prohibited under the sanctions from contributing their share of any 'Pool' claim, the individual member will bear the shortfall in accordance with their P&I Clubs sanctions rules.

Russian Federation, meaning that the 1992 Fund may face difficulties in establishing bank accounts from which to pay compensation.

3 Potential mitigating actions

- 3.1 In accordance with the recent IMO LEG guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates, Member States should recall their existing obligations pursuant to IMO Circular No. 3464^{<5>}, which states that when receiving a Blue Card or similar documentation from insurance companies, financial security providers and P&I Clubs outside the IG, the Member State should verify the financial standing and solvency of such company in order to make sure that prompt and adequate compensation for the victims is available.
- 3.2 The Secretariat has also spoken with representatives of the International Association of Classification Societies (IACS) regarding the provision of classification services to vessels in Russian Federation ownership, and the Secretariat is planning to speak with the Head of Licensing, Export Control Joint Unit, United Kingdom (UK) Department for International Trade, to discuss any possible exemptions from the sanctions and/or license which may be available, which the IOPC Funds could take advantage of, in order to fulfil its remit of paying compensation under difficult sanctions conditions.

4 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to:

- (a) take note of the information contained in the document; and
- (b) provide instructions to the Director as the governing bodies may deem appropriate.

<5> IMO Circular Letter No. 3464 of 2 July 2014.