



International Oil Pollution
Compensation Funds

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1992 Fund Assembly	92AES27	●
1992 Fund Executive Committee	92EC80	
Supplementary Fund Assembly	SAES11	●

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

Note by the Secretariat

Summary:

At the March 2022 meeting of the governing bodies, 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 3n and 5aa of European Union (EU) Regulation 833/2014^{<1>} (the Regulation), further restrictions came 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 of P&I Associations (International Group) were unable to insure such vessels, meaning that the owners needed to seek insurance from other non-IG P&I Clubs.

Thereafter, a price cap arrangement on Russian seaborne crude oil^{<3>} was imposed by the EU, designed to allow European operators to insure and transport Russian oil to third countries provided its price remained strictly below the cap (the 'Price Cap Scheme').

It has also been widely reported in the maritime press, that the numbers of tankers in the so-called 'ghost-fleet' that trade oil in breach of sanctions, has substantially increased, and that the average age of such tankers has also increased with a corresponding increase in moves to 'flags of convenience', with less enviable safety records.

<1> Council of the European Union (EU) Regulation No 833/2014 of 31 July 2014 concerning restrictive measures in view of the Russian Federation'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.

<3> The price cap took effect after 5 December 2022 for crude oil and 5 February 2023 for refined petroleum products.

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 (LEG) 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).
- 1.2 IMO document LEG 109/WP.6, which set out the draft LEG circular containing the guidance, was reproduced at the Annex to document IOPC/MAR22/8/1 because the draft LEG circular included information relevant to the IOPC Funds.
- 1.3 As matters have progressed, further restrictions against the Russian Federation were implemented. From 5 December 2022, pursuant to Article 3n^{<4>} of the Regulation, many of the International Group, which are subject to the jurisdiction of the European Union (EU), were no longer able to insure vessels trading or carrying Russian crude oil, as they once had. Furthermore, given that all of the International Group, 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, the knock-on effect has been significant^{<5>}.
- 1.4 At the IMO Legal Committee, which convened from 27 to 31 March 2023, a number of States submitted document LEG 110/5 which requested flag States to ensure that tankers under their flag adhere to measures which lawfully prohibit or regulate ship-to-ship (STS) transfers, and that such vessels adhere to the spirit of the safety requirements in IMO conventions and practice safe shipping standards to minimise the risk of oil pollution.

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. These include the possibility that the 1992 Fund may have to pay additional compensation if a shipowner or its insurer fails to establish a limitation fund, or have difficulties in establishing bank accounts from which to pay compensation.

^{<4>} 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.

^{<5>} If any of the International Group 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.

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 Automatic Identification System (AIS) transponders so as to disappear from coverage in order to conduct illegal 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. Recent press reports have highlighted a dramatic increase in the numbers of vessels within the so-called ‘ghost’ or ‘dark’ fleet, with some estimates as high as 600 vessels now participating in such a fleet^{<6>}.
- 2.3 Furthermore, other press reports list a record 311 mid-range tankers sailing without cargo or destination^{<7>}, compared to an average of 14 ships at any given time prior to this year. Meanwhile, just 33 empty vessels were signalling the Russian Federation as their destination, the lowest level on record and down from 103 at the beginning of 2023. It is thought that the increase in destination-less vessels could reflect shipowners trying to anticipate the region of highest demand in the reshuffling of the transport of Russian oil products.

Provision of insurance by International Group insurers – compliance with Price Cap Scheme

- 2.4 On 5 February 2023, the EU expanded the Price Cap Scheme which was intended to curb the revenue that the Russian Federation earned from its petroleum products of Russian origin which fall under the EU’s Combined Nomenclature (CN) code 2710. Two price caps were set (USD 45 and USD 100), depending on whether the petroleum product traded at a discount or a premium to crude oil.
- 2.5 Under the Price Cap Scheme, the International Group are permitted to provide P&I cover for shipments of Russian petroleum products to countries which are not part of the Price Cap Coalition^{<8>}, provided that the price of the cargo remains below the relevant price cap, per barrel, from the time it is loaded until it has cleared customs at the port of destination.
- 2.6 A shipowner or charterer that intends to transport Russian petroleum product cargoes after 5 February 2023 needs to provide its P&I Club with an attestation that it will not, for the duration of the insurance period, carry Russian petroleum product cargoes which has been sold at a price that, for the period it is on board the vessel, is in excess of the price caps.
- 2.7 In essence, this enables shipowners that are able to provide and comply with the attestation provisions, to be insured by an International Group P&I Club, for the limited destinations covered by the Price Cap Scheme. However, for voyages outside those permitted under the Regulations, no such insurance is permitted and shipowners will still have to seek insurance from insurers not covered by the sanctions.
- 2.1.1 *Provision of insurance by non-IG insurers*
- 2.8 With the likelihood that shipowners wanting to transport oil to destinations not permitted under the Regulations will still need to insure with non-IG insurers not caught by the sanctions, 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 (1992 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.

<6> According to figures released by physical trading company Trafigura.

<7> According to Kpler (a leading provider of data and analytics in commodity markets) compiled by Bloomberg.

<8> The Price Cap Coalition is composed of Australia, Canada, the European Union, France, Germany, Italy, Japan, the United Kingdom, and the United States.

Provision of services by shipping registries

- 2.9 A number of press reports have highlighted the increase in the number of ships undertaking flag transfers to those States with less enviable inspection records. The Paris Memorandum of Understanding (MoU) database which tracks port State detentions, lists one specific State for which the detention rate for 2022 worsened, with some 26.6% of inspections of that State's flagged vessels resulting in the ship being held, and more than 90% of inspections finding at least one deficiency in 2022.
- 2.10 Furthermore, 'dark activities' by that State's flagged vessels in the South Atlantic, increased from seven events in 2021, to 315 in 2022^{<9>}. Citing one of that State's tankers as an example of deceptive practices underway in shipping, it was reported that after switching to that State's flag in July 2022, the tanker engaged in a number of suspicious activities, including loitering in locations with no commercial or economic reason, location data manipulation and engaging in STS transfers.

STS operations

- 2.11 A number of press reports have commented upon the dramatic increase in STS operations being undertaken, especially in the Strait of Gibraltar near Ceuta. More than 50 operations were reported in the strait zone between the end of 2022 and February 2023, with many more STS operations likely to occur as one particular State's operators transfer oil to very large crude carriers (VLCCs), to allow for better economies of scale (lower costs) to carry the oil transferred to that State's ports.

The use of ageing vessels

- 2.12 The result of the growing 'ghost' or 'dark' fleet has been an increase in the age of the tanker fleet calling at Russian ports. In January 2022, 40% of Aframax tanker voyages to the Russian Federation were undertaken on tankers younger than 10 years old, and only 28% on vessels that were older than 15 years^{<10>}. No vessels older than 20 years were used.
- 2.13 However, by December 2022, the age profile had changed significantly, with 22% of the Aframax tankers being less than 10 years old, and 50% over 15 years old. Several voyages were conducted on vessels older than 20 years, and one Aframax tanker employed was older than 25 years.
- 2.14 Regrettably, it appears that a number of shipping companies that wish to operate outside the international regulatory order are being welcomed by some open registries, and with little regulatory oversight, appear to be willing to accept ships on the fringes of the global safety regime.

Banking restrictions

- 2.15 As at April 2023, the practical issues (such as the ability to establish bank accounts from which to pay compensation for an incident) that may arise if an incident occurs involving a vessel laden with Russian oil or within the Russian Federation itself, have not yet been tested. These difficulties may arise due to the existence of the sanctions, under which many banks have refused to have any dealings with money destined for or originating from the Russian Federation.

3 Potential mitigating actions

- 3.1 In accordance with the 2022 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, the 1992 Fund Administrative Council

<9> According to predictive maritime intelligence company Windward.

<10> According to data compiled by Poten & Partners; a team of brokers, commercial advisors and technical consultants specialising in the energy and ocean transportation industries.

fully endorsed the action points contained in the circular and encouraged Member States to adhere to its recommendations at the meeting of the governing bodies in March 2022 (document IOPC/MAR22/8/1). Specifically to that circular, Member States should recall their existing obligations pursuant to IMO Circular No. 3464^{<11>}, which states that when receiving a 'blue card' or similar documentation from insurance companies, financial security providers and P&I Clubs outside the International Group, 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 Furthermore, flag States are encouraged to comply with the suggestions detailed in IMO document LEG 110/5, by ensuring that tankers under their flag adhere to measures which lawfully prohibit or regulate STS transfers. Port States are also encouraged to ensure enforcement of the safety and liability conventions on such vessels, and to ensure that STS transfer operations are conducted in accordance with the applicable safety requirements in IMO conventions, and should those States become aware of vessels 'going dark', they should consider subjecting such vessels to enhanced inspections as authorised and notifying the vessel's flag administration as appropriate.
- 3.3 In late 2022, the Government of the United Kingdom (UK) issued a guidance document (UK Maritime Services Prohibition and Oil Price Cap Guidance), for the UK ban on the provision of maritime transportation of, and associated services for, certain oil and oil products^{<12>}.
- 3.4 That guidance document contains exceptions to the prohibitions on the provision of maritime transportation and associated services for Russian oil and oil products, specifically mentioning an exception for when dealing with an emergency, stating that the prohibitions will not apply to any person performing an act that assists with the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment.
- 3.5 The document also states that it is not an offence to provide financial/brokering services or funds globally to anyone who is supplying or delivering by ship, oil and oil products from a place in the Russian Federation to a third country, or between third countries, if it is to deal with an emergency, e.g., to clear up an oil spill.
- 3.6 Finally, as detailed within IMO Circular Letter 4548 of 7 April 2022, the Russian Federation stated that it guaranteed fulfilment of all assumed obligations in their entirety under the international merchant shipping instruments it had previously ratified. The Russian Federation also confirmed full validity of insurance or other financial securities in respect of liability, including 'blue cards' issued by Russian insurance companies in compliance with the requirements of international conventions.

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.

<11> IMO Circular Letter No. 3464 of 2 July 2014.

<12> Issued through the Office of Financial Sanctions Implementation (OFSI), part of His Majesty's (HM) Treasury.