



International Oil Pollution  
Compensation Funds

<b>Agenda Item 4</b>	IOPC/APR24/4/1	
<b>Date</b>	19 March 2024	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES28	●
<b>1992 Fund Executive Committee</b>	92EC82	
<b>Supplementary Fund Assembly</b>	SAES12	●

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

### Note by the Secretariat

#### Summary:

At its 109th session held in March 2022, the International Maritime Organization (IMO) Legal Committee (LEG) approved guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates (LEG 109/16/1 paragraphs 5.13 and 5.14). The guidance was subsequently issued as IMO Circular LEG.1/Circ.12 in April 2022 and included information relevant to the IOPC Funds.

From 5 December 2022, pursuant to Articles 3m and 5aa of European Union (EU) Regulation 833/2014<sup><1></sup> (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<sup><2></sup>.

Thereafter, a price cap arrangement on Russian seaborne crude oil<sup><3></sup> 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') and in June 2023, the EU Council adopted the 11th package of economic sanctions against the Russian Federation to prevent their circumvention, and to cater for further deceptive shipping practices, such as Automatic Identification System (AIS) spoofing and identity manipulation.

Since March 2022, the Director has reported regularly to the IOPC Funds' governing bodies on the potential impact on the international liability and compensation regime. At the last meeting of the governing bodies held in November 2023, the Director stated that the situation gravely concerned him due to the risk that an uninsured or badly damaged vessel could have an incident and cause oil pollution to occur ([document IOPC/NOV23/11/1](#), paragraph 4.4.36).

<1> Council of the European Union (EU) Regulation 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.

<b>Recent developments:</b>	<p>In December 2023, at its 33rd session, the IMO Assembly urged Member States and all relevant stakeholders to promote actions to prevent illegal operations in the maritime sector by the 'dark fleet' or 'shadow fleet' (IMO document A 33/6(a)/Add.1, and Resolution A.1192(33)).</p> <p>Also in December 2023, the EU Council adopted the 12th package of economic sanctions against the Russian Federation, making it mandatory for certain parties to notify the competent authority of any sale or transfer of ownership to any third country of any tanker engaged in the transport of crude oil or petroleum products listed in Annex XXV (Council Regulation (EU) 2023/2878).</p>
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly and Supplementary Fund Assembly</u></p> <p>(a) Take note of the information contained within the document; and</p> <p>(b) provide instructions to the Director as the governing bodies may deem appropriate.</p>

## 1 Introduction

- 1.1 The Legal Committee (LEG) of the International Maritime Organization (IMO) convened its 109th session from 21 to 5 April 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 (IMO document LEG 109/16/1, paragraph 5.14). The approved guidance was issued as a circular of the Legal Committee (LEG Circular LEG.1/Circ.12).
- 1.2 As matters progressed, further restrictions against the Russian Federation were implemented. From 5 December 2022, pursuant to Article 3m<sup><4></sup> of the Regulation, many of the International Group of P&I Associations (International Group), members 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 ramifications were significant<sup><5></sup>.
- 1.3 At the 110th session of 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.

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<4> Article 3m 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 not 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.

1.4 At the 33rd session of the IMO Assembly, which convened from 27 November to 6 December 2023, the Member States adopted Resolution A.1192(33) which called upon flag States to take measures against 'dark fleet' or 'shadow fleet' operations, specifically:

- to ensure that ships on their registers adhere to measures which prohibit or regulate ship-to-ship (STS) transfers of oil, and that such ships comply with pollution prevention requirements; and
- to consider requiring ships on their register to update their STS plans to include notifying them when and where they are engaged in such operations.

The Resolution also called upon port States to:

- ensure enforcement of the safety and liability conventions;
- notify flag States when they become aware of ships intentionally taking measures to avoid detection, such as turning off their Automatic Identification System (AIS) or Long-Range Identification and Tracking (LRIT) transmissions; and
- monitor STS operations within their territorial seas and EEZ and take appropriate action when ships are not complying with maritime safety or maritime pollution prevention regulations.

## **2 Possible impact upon the IOPC Funds**

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 IOPC Funds 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.

2.2 Furthermore, as the war in Ukraine has escalated, there is the potential for civilian vessels to be targeted. These may include oil tankers from which oil pollution would likely result. While the 1992 Fund has no liability for pollution damage resulting from acts of war, hostilities, civil war or insurrection, or for damage caused by oil escaping or discharging from a warship or other ship owned or operated by a State and used exclusively for Government non-commercial service at the time of the incident, in the event of an oil spill following an attack on a civilian vessel, there may be extensive pollution that affects governments, businesses, individuals, the environment, and wildlife.

### *Sanctions-avoiding vessels*

2.3 Since the introduction of the international sanctions, there have been a 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 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. There has been a dramatic increase in the numbers of vessels within the so-called 'dark' or 'shadow' fleet, with recent data showing numbers in the range of 600-100 vessels.

### *Location manipulation*

2.4 Additionally, maritime authorities are now dealing with a further deceptive shipping practice, namely location manipulation, which involves a vessel transmitting a fake location. At its meeting held in December 2023, the IMO Assembly called the ships operating outside international regulation often without insurance, a 'grave concern' to environmental safety, and to the welfare of crews and coastal states. Various newspaper reports state that most of the 'shadow fleet' is composed of vintage

tonnage ('virtual rust buckets'). The IMO noted they were 'older ships including some not inspected recently, having substandard maintenance, unclear ownership and severe lack of insurance'.

*EU Council – 12th package of economic sanctions*

- 2.5 In December 2023, the EU announced its 12th package of economic sanctions<sup><6></sup>, which made it mandatory for any (i) national of a Member State, (ii) natural person residing in a Member State, and (iii) legal person, entity or body which is established in the European Union to notify the competent authorities of any sale or other arrangement entailing a transfer of ownership to any third country of any tanker engaged in the transport of crude oil or petroleum products listed in Annex XXV, falling under the HS Code ex 8901 20.
- 2.6 The notification must be made to the competent authorities of the Member State in which the shipowner (the seller) is a citizen, resident or is established. The notification must include details of the tanker, including its IMO number and call sign and the sellers and buyers' identity.

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

- 2.7 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.
- 2.8 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<sup><7></sup>, 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
- 2.9 Essentially, 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 certain voyages. However, for voyages outside those permitted under the scheme, no such insurance is permitted, and shipowners will still have to seek insurance from insurers not covered by the sanctions.

*Provision of services by shipping registries*

- 2.10 A number of press reports have continued to highlight the increase in the number of ships undertaking flag transfers to those States with less enviable inspection records.

*STS operations*

- 2.11 A number of press reports have continued to comment upon the high number of STS operations being undertaken often in dangerous conditions, and without notification to the Member State in whose waters the operations are being conducted.

*The use of ageing vessels*

- 2.12 The result of the growing 'dark' or 'shadow' fleet has been an increase in the age of the tanker fleet calling at Russian ports. Regrettably, a number of shipping companies with little regulatory oversight, appear to be operating with ships on the boundaries of the global safety regime.

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<6> Introduced by Council Regulation (EU) 2023/2878.

<7> The Price Cap Coalition is composed of Australia, Canada, the European Union, France, Germany, Italy, Japan, the United Kingdom, and the United States.

*Banking restrictions*

- 2.13 As at April 2024, 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, acting on behalf of the 1992 Fund Assembly, fully endorsed the action points contained in the draft LEG circular<sup><8></sup> and encouraged Member States to adhere to its recommendations at the meeting of the governing bodies in March 2022 ([document IOPC/MAR22/9/2](#), paragraph 8.1.10). Specifically to that circular, Member States should recall their existing obligations pursuant to IMO Circular No. 3464<sup><9></sup>, 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 were 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 were 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 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<sup><10></sup>.
- 3.4 The guidance document also stated 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.
- 3.5 In late 2023, the Government of the United Kingdom announced further sanctions targeting specific individuals and groups involved in Russian trade, including more than 80 tankers as well as entities in over 30 countries. These further sanctions included targeting the companies established in one Member State, which had been set up to manage over 60 of the Russian State shipping company’s fleet after the imposition of earlier sanctions targeting that fleet.
- 3.6 Within IMO Circular Letter 4548 of 7 April 2022, it was noted that 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

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<8> The guidance was approved at the 109th session of the Legal Committee and was issued as a circular (LEG.1/Circ.12) in April 2022.

<9> IMO Circular Letter No. 3464 of 2 July 2014.

<10> Issued through the Office of Financial Sanctions Implementation (OFSI), part of His Majesty’s (HM) Treasury.

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.
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