

NOTIFICATION AND AUTHORISATION OF TANKER SALES
ARTICLE 3Q OF COUNCIL REGULATION (EU) NO. 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 19 FEBRUARY 2024

1. Does this provision prohibit the sale of oil tankers to Russia? What about other third countries?

Last updated: 19 February 2024

This provision does not entail a straightforward ban on the sale or other ownership transfer of tankers to Russia. It introduces transparency into these transactions to any third country to address risks of evasion of the EU import ban on Russian crude oil or petroleum products and of the G7+ Oil Price Cap.

The provision employs a two-pronged approach with notification and authorisation requirements depending on the nationality/place of establishment of the buyer and the use of the tanker:

- (i) The tanker is sold to a natural or legal person, entity or body **in Russia or for use in Russia**: the sale is prohibited unless it is authorised by the competent authority of a Member State, at the conditions it deems appropriate (Article 3q, paragraphs 1 to 3).
- (ii) The tanker is sold to a natural or legal person, entity or body from **any third country or for use in any third country, other than Russia**: the sale is possible but must be **notified** to the competent authority (Article 3q, paragraph 4).

Any sale or transfer of ownership after 5 December 2022 and prior to 19 December 2023 shall be notified to the competent authorities before 20 February 2024.

This measure seeks to introduce transparency into the sale of tankers, in particular second-hand carriers, that could be used to evade the import ban on Russian crude oil or petroleum products and the G7+ Oil Price Cap following the change of ownership. The inclusion of this provision aims to shed light on transactions that could otherwise result in the circumvention of these provisions, for example by facilitating the expansion of a tanker fleet transporting Russian oil above the price cap.

2. What is meant by the ‘other transfer of ownership’ or ‘other arrangement entailing a transfer of ownership’?

Last updated: 19 February 2024

The obligations set out in the article apply to any ‘sale and transfer of ownership’ (paragraphs 1 and 5 of Article 3q) and ‘other arrangement entailing a transfer of ownership’ (paragraph 5 of Article 3q). Both expressions have the same meaning.

Transfer of ownership should be understood broadly, covering for instance situations such as sale, barter, relinquishment, inheritance, interests in a trust or other similar legal arrangement as well as any other sort of division of the ownership or transfer of title such as a corporate

restructuring. This broad interpretation aims at avoiding the circumvention of the measure by hiding the genuine nature of the transaction.

3. To whom does the provision apply?

Last updated: 19 February 2024

This provision applies to any national of a Member State, natural person residing in a Member State, and legal person, entity or body which is established in the Union. An EU individual who owns, for instance through a third country company, a tanker registered under a third country flag is subject to this obligation. This is in line with Article 13(c) of Council Regulation 833/2014 which sets out the jurisdictional scope of the Regulation.

It is prohibited for EU operators to take part in any activities seeking to circumvent EU sanctions, for instance by acting as a substitute for a natural or legal person subject to Article 3q. The use of any intermediary to carry out the sale or transfer of ownership does not relieve the EU natural or legal person from the authorisation or notification obligations. For instance, circumvention can occur if an intermediary is used to carry out an operation that, although apparently legitimate, has the sole purpose of neutralising the effect of these obligations.

4. Does this provision only apply to the sale or other transfer of ownership of EU-flagged vessels?

Last updated: 19 February 2024

No. This provision applies to the sale or other transfer of ownership of both EU and non-EU flagged vessels that are owned by a national of a Member State, natural person residing in a Member State, and legal person, entity or body which is established in the Union.

5. Who should notify? What information should be shared?

Last updated: 19 February 2024

The notification can be done by the EU natural or legal person subject to the obligation, as well as any person acting in the person's name and/or on their behalf such as a lawyer, registered agent, ship broker. The identity of the person for whom they are acting must be clearly stated and all documentary evidence provided.

Such notification should contain the full identities of the owner, the seller (if different from the owner) and the purchaser, where applicable the incorporation documents of the seller and the purchaser including information details on the shareholding and management, the identification documents of the vessel including the IMO ship identification number of the tanker and the Call Sign of the tanker. It is also recommended to include other relevant documents, such as the sale and purchase agreement or information regarding or produced by the ship broker and escrow agent.

6. Which tankers are concerned?

Last updated: 19 February 2024

This provision covers tankers falling under HS code ex 8901 20 suited for the transport of crude oil or petroleum products listed in Annex XXV. This provision applies where the tanker could transport such products, irrespective of their effective future use. This provision would not cover tankers that are suited for the transport of products such as LNG or LPG.

Where a tanker could transport both petroleum products listed in Annex XXV as well as other petroleum products that are not listed in this Annex, the sale or transfer of ownership still falls under the scope of Council Regulation (EU) 833/2014.

7. To which competent authority should an operator notify the sale or other transfer of ownership?

Last updated: 19 February 2024

The list of competent authorities can be found in Annex I to Council Regulation (EU) 833/2014. The person should notify the authority of the Member State from which it is a citizen, a resident or is established.

The Member State concerned shall inform the other Member States and the Commission of any authorisation or notification within two weeks.

Member States are encouraged to inform their operators through adequate channels on practical modalities of such notifications (indication of the authority to which sale should be notified, creation of a standard form, etc).

8. At what conditions can a competent authority authorise the sale or other transfer of ownership of tankers to a Russian person or for use in Russia?

Last updated: 19 February 2024

A competent authorities may authorise, under the conditions they deem appropriate, the sale or other transfer of ownership of tankers for the transport of crude oil or petroleum products listed in Annex XXV, falling under HS code ex 8901 20, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia.

They may take into account the following elements regarding the purchaser: past and current experience and track record in the maritime transport sector, ownership of the vessel as well as its flag, classification society and insurance provider, information and attestations from the shipbroker or escrow agent, management and shareholding involvement, resources to operate and maintain the tanker, track record for sanctions compliance as well as the intention to regularly access Russian territorial waters. For a legal person, entity, or body, further elements such as the place of registration, date of incorporation, content of the corporate documentation, activities and flagging of the purchaser's existing fleet (or lack thereof), ownership structure of

the purchaser including ultimate beneficial owners, identity of the shareholders and managers, etc. This list is indicative only.

Where the competent authority has reasonable grounds to believe that the tanker would be used to transport, or be re-exported to transport, Russian crude oil or petroleum products listed in Annex XXV, for import into the Union (Article 3m) or for transport to third countries above the G7+ Oil Price Cap (Article 3n), the national competent authority should not grant the authorisation. This could be the case, for example, when the national competent authority holds information (acquired through confidential or public sources) suggesting that a party in a transaction subject to authorisation is engaged in the circumvention of sanctions or that certain elements of the transactions are suspicious (e.g. one or more of the parties cannot be identified or the corporate structure is excessively complex). Conversely, and for instance, a competent authority can grant an authorisation where it receives evidence that the buyer will transport Russian crude oil or petroleum products in compliance with the G7+ Oil Price Cap or that it will access Russia only to transport non-Russian crude oil.

9. How can a seller ascertain that its tanker is not being sold for “use in Russia”?

Last updated: 19 February 2024

In order to comply with this provision, an operator selling or transferring ownership should carry out the necessary due diligence to establish whether the buyer will use the tanker in Russia.

A seller should seek this information from its counterpart with an explicit documented inquiry. The seller may also make a declaration that, based on such evidence, it has undertaken due diligence on the buyer of the tanker, and it is not aware of any reason why the tanker would be used in Russia. Furthermore, the declaration should include an assertion that the buyer or/and its ultimate beneficial owners are not subject to EU sanctions.

Authorisations should be sought only for cases in which the due diligence has revealed that the sale is to the benefit, directly or indirectly, to a Russian person or for use in Russia. Where no such information has been collected, it is not necessary to request an authorisation. A notification is sufficient. National competent authorities may reject such requests.

10. Will an EU operator be held liable if the tanker it sold is subsequently used in Russia and it had not requested an authorisation?

Last updated: 19 February 2024

The EU individual or entity selling or transferring ownership, as well as operators participating in the sale or transfer of ownership such as a shipbroker or escrow agent, should carry out the necessary due diligence to ensure compliance with EU sanctions.

Where the tanker is sold to a Russian person or is for use in Russia, sufficient evidence must be provided to the national competent authority to prove that the tanker would not be used in breach of the import ban on Russian crude oil or petroleum products and the G7+ Oil Price Cap. If the

EU operator knowingly and intentionally fails to conduct such due diligence, this can be considered as participation in a circumvention scheme.

Article 10 of Regulation 833/2014 (non-liability clause) remains applicable i.e the sale of a tanker by an EU operator shall not give rise to liability, if he/she did not know, and had no reasonable cause to suspect, that the tanker sold to an operator in a third country would be used in Russia.

11. Does the notification obligation apply retroactively?

Last updated: 19 February 2024

Article 3q, paragraph 5, provides that the sale or other transfer of ownership of tankers concluded after 5 December 2022 and prior to 19 December 2023 should be notified to the competent authorities by 20 February 2024 at the latest. It is the obligation of the EU natural or legal person to trace back the sale or transfer or ownership and to collect all relevant information to be shared with the competent authority. Such notification should be made in line with the requirements set out in Article 3q, paragraph 4. Please refer to FAQ 5 for further information.

Member States national authorities should raise awareness with relevant stakeholders on the need to comply with such an obligation, including for the sales which occurred prior to the adoption of the measures, up to 5 December 2022.

12. Does this provision cover long-term charterparties?

Last updated: 19 February 2024

It is not required to notify or seek authorisation for long-term charterparties. EU natural and legal shipowners that charter tankers, directly or indirectly, must comply with EU sanctions (Article 13 of Council Regulation (EU) 833/2014). This includes bareboat charterparties.

Where a tanker is long-term chartered, the EU natural and legal shipowner should carry out the necessary due diligence to ascertain, in particular, compliance with the EU import ban on Russian oil and the G7+ Oil Price Cap.

13. What are the notification obligations of Member States under this provision?

Last updated: 19 February 2024

The Member State receiving notifications and granting authorisations shall inform the other Member States and the Commission of any authorisation granted under paragraph 2, and of any notification under paragraphs 4 and 5, within two weeks of the authorisation or notification.

This information sharing shall support the detection instances of breach or circumvention of this provision. This can facilitate the implementation and enforcement of the EU import ban on Russian crude oil or petroleum products and of the G7+ Oil Price Cap, in line with Article 3na,

with a view to further identify vessels and entities of concern carrying out one or more deceptive practices while transporting Russian crude oil and petroleum products.

Any information provided or received in accordance should be used for the purposes for which it was provided or received, including ensuring the effectiveness of the measure.