

21 September 2022

## TO ALL MEMBERS

Dear Sir or Madam

### **EU Sanctions – clarification published on the carriage of certain Russian cargoes including coal and fertilisers**

UPDATE – 21 September 2022:

On 19 September 2022 the EU further amended its FAQs clarifying the application of provisions relating to the carriage of certain cargoes from Russia, including coal and other solid fossil fuels as well as certain types of fertilizer.

Contrary to the position taken by the EU in August, the FAQs now make it clear that the transport of coal and certain specified goods in Annex XXI of Council Regulation 833/2014 (and related insurance) is in fact not prohibited when the goods are being carried to third countries. The relevant amended FAQs are set out below:

#### **2. Is the transfer of goods listed in Annexes XVII, XXI and XXII of Council Regulation 833/2014 by an EU company allowed when the goods are destined for a third country and are not transiting Union territory?**

*Last update: 19 September 2022*

No. Articles 3g, 3i and 3j of Council Regulation 833/2014 prohibit the purchase, import, or transfer, directly or indirectly, of the goods listed in Annexes XVII, XXI and XXII if they originate in Russia or are exported from Russia. The prohibition on transfer applies irrespective of the final destination of the goods, whereas the prohibition on the import applies by nature to goods moving “into the Union”. Provided the transfer falls within the scope of Article 13 of Council Regulation 833/2014, it is not relevant whether the goods are destined for the EU or not. This supports the aim of the sanctions which is to significantly weaken Russia's economic base, depriving it of critical markets for its products and to significantly curtail its ability to wage war. Any other interpretation would render the prohibition largely devoid of purpose and create significant loopholes.

However, the Union is committed to avoiding that its sanctions impact food and energy security of third countries around the globe, in particular of the least developed ones. In light of this commitment, which is clearly stated in recitals 11 and 12 of Council Regulation 2022/1269, the transfer to third countries of certain goods listed in Annex XXI and XXII should be allowed “to combat food and energy insecurity around the world” and “in order to avoid any potential negative consequences therefor” in third countries. This applies to the transfer to third countries, as well as financing or financial assistance related to such transfer, carried out by EU operators or via the EU territory (including in transit) of the following goods:

- Fertilisers falling under CN codes 310420, 310520; 310560; ex31059020 and ex31059080 related, as listed in Annex XXI;
- Animal feed falling under CN code 2303, as listed in Annex XXI;
- Certain hydrocarbons falling under CN codes ex2901 and 2902, as listed in Annex XXI;
- Essential goods falling under CN codes 44 (wood); 2523 and 6810 (cement products), as listed in Annex XXI;
- All the items listed in Annex XXII (coal and related products).

**4. What is the scope of the prohibition on relevant services (e.g. financial assistance, including brokering or insurance) as stated in Articles 3g, 3i and 3j of Council Regulation 833/2014 for the transport or transfer of goods or products listed in Annexes XVII, XXI or XXII to third countries?**

*Last update: 19 September 2022*

The provision of insurance, brokering services or other financing or financial assistance by EU operators for the transport or transfer of good or products listed in Annexes XVII, XXI or XXII to third countries is prohibited. Regardless of whether the transfer of these goods or products is performed by an EU or a non-EU operator, where the provider of assistance related to such a shipment is an EU operator, they remain bound by the prohibition.

However, the Union is committed to avoiding that its sanctions impact food and energy security of third countries around the globe, in particular of the least developed ones. In light of this commitment, which is clearly stated in recitals 11 and 12 of Council Regulation 2022/1269, the transfer to third countries of certain goods listed in Annex XXI and XXII should be allowed “to combat food and energy insecurity around the world” and “in order to avoid any potential negative consequences therefor” in third countries. This applies to the transfer to third countries, as well as financing or financial assistance related to such transfer, carried out by EU operators or via the EU territory (including in transit) of the following goods:

- Fertilisers falling under CN codes 310420, 310520; 310560; ex31059020 and ex31059080 related, as listed in Annex XXI;
- Animal feed falling under CN code 2303, as listed in Annex XXI;
- Certain hydrocarbons falling under CN codes ex2901 and 2902, as listed in Annex XXI;
- Essential goods falling under CN codes 44 (wood); 2523 and 6810 (cement products), as listed in Annex XXI;
- All the items listed in Annex XXII (coal and related products).

## **The original circular as published is set out below.**

Published 15 August 2022

On 10 August 2022 the European Union (EU) published updated FAQs clarifying the application of provisions relating to the carriage of certain cargoes from Russia, including coal and other solid fossil fuels as well as certain types of fertilizer. As this Circular sets out, these clarifications will have a significant impact on the carriage of these commodities by EU entities and the provision of insurance for carriage to any entity regardless of their domicile.

On 8 April 2022 the EU published [Council Regulation 2022/576](#) which amended [Regulation 833/2014](#) and contained the following provisions:

### Article 3i

1. It shall be prohibited to purchase, import, or transfer, directly or indirectly, goods which generate significant revenues for Russia thereby enabling its actions destabilising the situation in Ukraine, as listed in Annex XXI into the Union if they originate in Russia or are exported from Russia.
2. It shall be prohibited to:
  - (a) provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly in relation to the prohibition in paragraph 1.
  - (b) provide financing or financial assistance related to the goods and technology referred to in paragraph 1 for any purchase, import or transfer of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly in relation to the prohibition in paragraph 1.
3. The prohibitions in paragraphs 1 and 2 shall not apply to the execution until 10 July 2022 of contracts concluded before 9 April 2022, or ancillary contracts necessary for the execution of such contracts.
4. As of 10 July 2022, the prohibitions in paragraphs 1 and 2 shall not apply to the import, purchase or transport, or the related technical or financial assistance, necessary for the import into the Union, of:
  - (a) 837 570 metric tonnes of potassium chloride of CN 3104 20 between 10 July of a given year and 9 July of the following year;
  - (b) 1 577 807 metric tonnes combined of the other products listed in Annex XXI under CN 3105 20, 3105 60 and 3105 90 between 10 July of a given year and 9 July of the following year;
5. The import volume quotas set out in paragraph 4 shall be managed by the Commission and the Member States in accordance with the management system for tariff-rate quotas provided for in Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 (\*).

### Article 3j

1. It shall be prohibited to purchase, import, or transfer, directly or indirectly, coal and other solid fossil fuels, as listed in Annex XXII into the Union if they originate in Russia or are exported from Russia.
2. It shall be prohibited to:

- (a) provide technical assistance, brokering services or other services related to the goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance and use of those goods and technology, directly or indirectly in relation to the prohibition in paragraph 1.
  - (b) provide financing or financial assistance related to the goods and technology referred to in paragraph 1 for any purchase, import or transfer of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly in relation to the prohibition in paragraph 1.
3. The prohibitions in paragraphs 1 and 2 shall not apply to the execution until 10 August 2022 of contracts concluded before 9 April 2022, or ancillary contracts necessary for the execution of such contracts.

The texts of Annex XXI and Annex XXI as referred to above can be found in [Council Regulation 2022/576](#).

It should be noted that certain types of fertilisers (of which Russia is a major producer) are included in the list of commodities said to generate significant revenues for Russia as set out in Annex XXI and thus subject to prohibitions in Article 3i.

It seemed clear to Clubs and their advisors that on a plain reading of both Articles 3i and 3j the prohibitions around the carriage of Russian fertilisers and coal and other solid fossil fuels related only to their import into the EU and not to carriage to non-EU destinations. The provisions were subject to a wind-down period in any event until 10 July 2022 and 10 August 2022 respectively for sale contracts concluded before 9 April.

The EU issued FAQs on 17 April and 14 June 2022 but these appeared to clarify only that EU entities were prohibited from purchasing Russian such cargoes intended for delivery both into and outside the EU but not otherwise being involved in their carriage.

Further FAQs were issued on 10 August however – i.e. the date on which the wind-down period for coal and other solid fossil fuel cargoes expired – which cast significant doubt on the previous interpretation industry had placed on the wording of Articles 3i and 3j. The text of these latest FAQs can be found [here](#). They appeared to suggest that the prohibitions in these Articles were in fact intended to have wider impact than just carriage into the EU and could impact of the carriage of such cargoes from Russia to any other country.

The International Group (IG) consequently sought immediate clarification from the EU Commission regarding the meaning of these latest FAQs, the scope of the EU prohibitions and potential impacts on both Members and Clubs.

The EU have made it clear to the IG that whilst the reference to “import” in the Articles is indeed just limited to import into the EU, the other restrictions on direct or indirect transfers are intended to equally apply to non-EU destinations. It therefore now the case that the involvement of an EU entity in the carriage of Russian fertilisers and coal or other solid fossil fuels to any destination whatsoever and whether inside or outside the EU would be in breach of EU sanctions.

Furthermore, the EU Commission has clarified to the IG that the prohibition on the provision of “financial assistance” in sections (2)(b) of both Article 31 and 3j and which includes insurance and reinsurance services prevents any entity subject to the jurisdiction of the EU from providing insurance and reinsurance for the carriage of Russian fertilisers and coal and other solid fossil fuel cargoes regardless of destination.

Most of the Clubs that comprise the IG are subject to the jurisdiction of the EU. All IG 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. If any of the IG Clubs are prohibited under these sanctions from contributing their share of any Pool claim, the individual Member will bear the shortfall in accordance with their Club’s sanctions rules. The same principle will apply for claims above US\$100 million if any EU domiciled reinsurers on the IG reinsurance programme are prohibited under these sanctions from paying the claim.

With no suggestion of the EU being willing to grant a further wind-down period to allow the consequences of these latest FAQs to be absorbed by industry, the impacts as set out above for Members involved in these trades have immediate effect. Any Members with questions are strongly encouraged to contact their Club.

Members are also reminded that EU Sanctions do not apply extra-territorially. Article 13 of the Regulation provides that they apply:

1. within the territory of the EU
2. on board any aircraft or any vessel under the jurisdiction of a Member State
3. to any person inside or outside the territory of the EU who is a national of a Member State
4. to any legal person, entity, or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a Member State
5. to any legal person, entity, or body in respect of any business done in whole or in part within the EU.

All the IG Clubs have issued similar circulars.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)