



Sales of oil tankers – is the buyer's compliance the seller's risk?

Selling an oil tanker in today's sanctions landscape is not as simple as signing a contract. Under EU rules, sellers must notify authorities – and in some cases get prior approval – to avoid liability if a vessel later ends up transporting sanctioned Russian oil. The question is: how far does the seller's responsibility go?

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On 18 December 2023 the EU introduced measures to prevent oil tankers from being sold to undermine sanctions. Article 3q of EU Regulation 833/2014 (the **Regulation**) requires the immediate notification – and in some cases prior authorisation – of any sale of an oil tanker suited for the transport of crude oil or petroleum products listed in Annex XXV of the Regulation (**Annex XXV Cargos**). This is intended to make transfer of ownership more transparent and to prevent tankers from being sold for use in the transportation of sanctioned Russian oil. As a result, it is important that any applicable seller of such a vessel knows the entity to whom they are selling and, if required, obtains prior authority and gives notification.

When it applies

The regulation applies to any seller that is an EU member state national, a natural person residing in the EU or a “legal person, entity or body which is established in the Union”. The EU has said that the regulation applies to an EU individual who owns, through a third country company, a tanker registered under a third country flag.

What is required

Article 3(q) paragraph 4 of the Regulation requires any such seller to immediately notify the relevant competent authority (**RCA**) in the Seller’s state of a sale or other transfer of ownership of a tanker for the transport of Annex XXV Cargos (ie. crude oil and petroleum products. The regulation is not clear on whether notification should be “immediately” after a sale is agreed, or after it completes.

The notification should, at the least, include:

the identity of the buyer and seller;

where applicable, incorporation documents of the buyer and seller (including shareholding and management structures); and

the IMO number and call sign of the vessel.

Gard recommends use of the following template for notification purposes: [faqs-sanctions-russia-tanker-sales-notification-template en.docx \(live.com\)](https://www.gard.com/~/media/Files/2023/12/18/FAQS-sanctions-russia-tanker-sales-notification-template_en.docx)

Sales involving Russia

In addition, paragraphs 1 and 2 of Article 3q together provide that if the vessel is being sold to a natural or legal person, entity or body in Russia, or for use in Russia, the seller must obtain prior authority from the RCA. The regulation does not state if the approval is required before there is an agreement to sell, or before the sale completes and each member state may have a different approach to approvals. The RCA will determine requests for approval of a sale or transfer by considering if they believe it will be used for the transportation of Russian origin cargos to the EU or third party countries in breach of the oil price cap. It is unclear how long after the change of ownership the vessel's expected activities would be assessed. Gard recommends that an expansive view of the regulation is adopted and that the process of seeking authority is started as early as possible.

The EU has said that an approval for sale should only be sought from an RCA if due diligence has revealed that authorisation is needed.

Liability, penalties and how to avoid them

A seller may be held liable for participation in a circumvention scheme if they are later found to have sold a vessel in breach of the Regulation.

The penalty is determined by the RCA and liability may be imposed notwithstanding a lack of knowledge about the vessel's activity after the sale.

The problem of course is identifying in advance if or how a vessel may be used in the future to breach sanctions – buyers are unlikely to inform a seller of any unlawful plans! This is recognised by the EU and so a seller may avoid liability if it can demonstrate that the seller did not know and had no reasonable cause to suspect that the sale would constitute a breach of sanctions (see Article 10 of the Regulation). To show this, a seller will be required to provide details of the pre-sale due diligence that was undertaken and the results that led to their conclusion that the sale would not breach the regulations.

In any event, Gard recommends that legal advice is sought prior to any tanker sale by an EU seller as defined above, particularly if the seller is concerned about how the tanker may be used by the buyer. Legal advice may also help to clarify the standard of due diligence that they should apply in the circumstances and which corporate/shareholder information should be obtained from the buyer.

Some scenarios

Scenario 1: Russian buyer and/or vessel is being used in Russia, and seller failed to get authority from the RCA

In this scenario the seller is in breach. It should be noted that the regulation applies when the new registered owner and/or the ultimate beneficial owner are Russian. This means that the seller would also be held liable where the beneficiary of the sale is a Russian person, body or entity even if the new registered owner is not.

The seller would only be able to avoid being penalised if they could show that they did not know and had no reasonable cause to suspect that the sale would constitute a breach of sanctions – this will require them to provide the RCA with the due diligence undertaken.

Scenario 2: Buyer not Russian but they resell the vessel to a Russian or for use in Russia.

In this scenario, the original seller may be in breach, for participation in a circumvention scheme: the regulation prohibits sale or transfer of ownership whether “ *direct or indirect* ” or when for the purpose of re-export for use in Russia or by a Russian.

Again, the seller would only be able to avoid being penalised if they could show that they did not know and had no reasonable cause to suspect that the vessel would be sold on in a way that constituted a breach of sanctions. This will require them to provide the RCA with the due diligence undertaken on the buyer and their intentions.

Summary

Gard recommends that any seller of a tanker with links to the EU should conduct due diligence even where the sale is not subject to approval by a RCA. It is equally important that the due diligence process is properly documented and retained, or the seller risks being held liable for the buyer’s misuse of the vessel. Due diligence may include seeking information from the buyer on their intentions and analysing how their existing/historical fleet has traded.

Links

The Regulation - [EUR-Lex - 02014R0833-20241217 - EN - EUR-Lex](#)

FAQ - https://finance.ec.europa.eu/document/download/0390581b-65ea-4a70-86be-65a19f712e74_en?filename=faqs-sanctions-russia-tanker-sales_en.pdf

Template - [faqs-sanctions-russia-tanker-sales-notification-template_en.docx \(live.com\)](#)

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