

SHIPPING | FEBRUARY 2024

THE EU SEEKS GREATER TRANSPARENCY FOR THE SECOND-HAND TANKER MARKET

As the EU continues to take measures to restrict Russia's ability to trade its crude oil and petroleum products, it has moved to try and introduce greater transparency into the second-hand tanker market.

The EU's 12th package of sanctions against Russia, introduced by Council Regulation (EU) 2023/2878 dated 18 December 2023 (the **Amending Regulation**)¹ inserted a new Article 3q 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.

The notification must be made to the competent authorities of the Member State in which the ship owners (i.e. the Sellers) are a citizen, resident or established. Several Member States have already published forms to be completed by Sellers in their jurisdiction.

The notifications must include details of the tanker in question, including its IMO number and call sign and the Sellers and Buyers' identity (if corporates, details of their ultimate shareholders, any intermediate shareholders and management along with supporting corporate documentation).

Whilst there is some ambiguity as to when the obligation to lodge the notification arises, we currently consider that because the obligation to make notification is linked to the transfer of the vessel, the notification does not have to be made upon the signature of the memorandum of agreement (**MOA**) but, rather, immediately upon the transfer of title in the vessel, i.e. at completion.

In addition, the sale of any tanker falling into the category described above concluded between 5 December 2022 and 19 December 2023 should have been notified to the competent authorities in the Sellers' jurisdiction by 20 February 2024.

According to the recently published guidance from the EU, the Amending Regulations apply where the registered owner is owned (or ultimately owned) by an entity or individual meeting the jurisdictional requirements described above². If any Sellers are in doubt as to their notification obligations, we strongly recommend they obtain legal advice confirming the position.

The Amending Regulation is not explicit on the point, but we consider that the obligation to make the notification is sufficiently widely drafted as to impose an obligation on every person or entity who or which is subject to EU jurisdiction and which is involved in the transfer, including brokers, lawyers, notaries, etc. We do not consider it applies where the Sellers are not subject to the jurisdiction of an EU member state (even if the brokers and / or lawyers are) but we do think that, if the Sellers are subject to the jurisdiction of an EU member state and do not make the necessary notification, then the brokers or lawyers may feel that it is incumbent on them to do so.

Going forward, for tankers sold to Buyers outside of the EU, we would expect MOAs to include a clause expressly permitting the Sellers to notify the competent authorities of the transaction and obliging the Buyers to share with the Sellers the information needed to do so. We would further expect those professionals supporting the sale of second-hand tankers to require the Sellers for whom they are working to make such notification and to be advised that in the event of a failure to do so, the professionals may be required to make their own notification.

¹ see <https://eur-lex.europa.eu/eli/reg/2023/2878/oj>

² see https://finance.ec.europa.eu/document/download/0390581b-65ea-4a70-86be-65a19f712e74_en?filename=faqs-sanctions-russia-tanker-sales_en.pdf

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