

ACCESS TO EU PORTS

RELATED PROVISION: ARTICLE 3ea OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 27 JULY 2022

1. How is the port access ban monitored?

Last update: 2 May 2022

The monitoring will be done via the Union Maritime Information and Exchange System¹ (which also links to EQUASIS², a public database providing, among other, safety related information on ships and companies). This system supports EU Member States with operational maritime surveillance capabilities in particular by providing the situational maritime awareness picture, tracking any ship movements in near real time. All EU Member States have access to this system and share information via this system.

2. What is meant by the term “relevant international conventions”?

Last update: 2 May 2022

The term refers to SOLAS, MARPOL or Load Lines conventions and the ships falling under their scope (so called convention ships). Effectively, this means ships of 500 GT and beyond (from smaller to the biggest) sailing commercially in international shipping.

3. How can EU port authorities and operators know if a Russian vessel has changed flag?

Last update: 2 May 2022

Every ship worldwide has to be assigned a unique identification number which is provided on behalf of the International Maritime Organization (the ‘IMO number’). The IMO number of the vessel is assigned from the time it is built and remains the same throughout her servicing.

As a result, any attempt to circumvent the sanctions by change of flag could be easily identified by the port authorities through a check of the IMO number of the vessel together with the records onboard the ship. In this regard, under SOLAS (International Convention for the Safety of Life at Sea), the ships are also obliged to keep onboard the synopsis report which tracks the history of change of flags. Also port authorities have access to the monitoring system mentioned above.

¹ Established under Directive 2002/59/EC

² Electronic Quality Shipping Information System

4. How to address a ship transporting goods the transport of which may be authorised?

Last update: 2 May 2022

The derogations provided for in Article 3ea(5) are subject to prior authorisation from the relevant national competent authority, which can only be granted under strict and specific conditions. If a ship falling under the scope of the prohibition and carrying goods the transport of which may justify an authorisation to access a port requests access to a port in the Union, it is the responsibility of the port authorities to make a case-by-case assessment and supervise that the unloading concerns only goods falling under the derogations and that their unloading is not otherwise prohibited by the Regulation.

5. Is it prohibited to conduct ship-to-ship operations with Russian flagged vessels?

Last update: 2 May 2022

Ship-to-ship operations can occur in different cases, namely a ship-to-ship operation between a Russian flagged vessel and a third country flagged vessel in international waters, a ship-to-ship operation between Russian and EU-flagged vessels, and a Russian flagged vessel and a third-country flagged vessel in territorial waters of a Member State.

By virtue of the non-circumvention clause (laid down in Article 12), it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in Council Regulation 833/2014, including by acting as a substitute for natural or legal persons, entities or bodies targeted by the Regulation. Accordingly, if a ship-to-ship operation takes place with the objective or effect of circumventing the prohibition of Article 3ae of Regulation (EU) No 833/2014, such an operation would be caught by this provision. The determining element is that such a ship-to-ship operation is orchestrated in order for a vessel that is not subject to the port access ban to call in an EU port, where otherwise a Russian flagged vessel could not call in.

Per Article 13, the Regulation applies to all vessels that fall under the jurisdiction of Member States and vessels that are present in the territory of the Union.

6. Under the derogations in Article 3ea, how should goods be loaded and unloaded?

Last update: 2 May 2022

National competent authorities need to ensure that each authorised entry fulfils the derogation conditions laid down in Article 3ea of Council Regulation 833/2014. This means that each entry should be authorised individually. Where a vessel has been authorised to call on a port in order to unload goods subject to a derogation, it must obtain a separate authorisation in order to load goods. A cargo-free vessel may be authorised to call on a port in order to load goods.

The loading of goods is limited to what is allowed under the derogations. Article 3ea, points (a) and (e) refer explicitly to the purchase, import or transport into the Union. Accordingly, loading of goods would only be possible if there is a purchase or further transport into another Union port as final destination. It remains to be determined why a Russian-flagged vessel would provide transport services between two EU ports in such a case. Points (b) and (d) allow for an entry into port whether the purchase, import or transport is for the Union or to a third country.

7. Can Russian flagged recreational crafts berthed in EU port remain or leave this port?

Last update: 2 May 2022

Russian flagged recreational ships that were berthed in the port of a Member State before 16 April 2022 do not fall under the scope of the prohibition since their sole presence does not amount to access into a Union port. However, upon leaving a Union port, any request to return would result in calling into a Union port and be prohibited under Article 3ea.

If such a Russian flagged recreational ship, due to its size or technical characteristics, would not be able to leave the territory of the Union upon exiting the port, Member State authorities should not allow its departure, knowing that it would not be allowed to come back into an EU port. Accordingly, a recreational craft should be allowed to leave the port only if it will travel outside the Union territory.

Furthermore, any person or entity listed in Annex I of Council Regulation (EU) 269/2014 is subject to an asset freeze and any of his/her/its assets, including recreational crafts, should be frozen.

8. Can a Russian flagged vessel which entered an EU port under the exemption in paragraph 4 be authorised to leave?

Last update: 2 May 2022

The national competent authority must ascertain that the ship is entering under the conditions deemed necessary for in paragraph 4. The port access ban does not require blocking a ship which would have entered in accordance with this exemption, hence it may leave the port.

9. Are fishing vessels excluded from the scope of Article 3ea of Regulation 833/2014?

Last update: 5 May 2022

As mentioned in Q2 above, the relevant international conventions are SOLAS, MARPOL and Load Lines (LL) Conventions. As a result, “fishing vessels” are included in the sanction regime only in case they hold any “certificate” issued in accordance with SOLAS, MARPOL or Load Lines (LL) Conventions. Accordingly, at least any fishing vessel certified in accordance with

MARPOL ANNEX IV has to be considered as “ship” for the purpose of Article 3ea(3)(a) of Council Regulation (EU) 833/2014 and falls within the scope of the ban.

10. Is a bareboat charter out under Russian flag reverting to an EU Member State flag register caught by the prohibition in Article 3ea paragraph 2?

Last update: 10 October 2022

Article 3ea covers all Russian flagged vessels, as well as vessels that change their Russian flag or their registration, to the flag or register of any other State after 24 February 2022. Hence, where a bareboat charter sailing under Russian flag reverts to its underlying EU Member State flag or any other flag after 24 February, she should be considered as flying the Russian flag in accordance with Article 3ea paragraph 2. Hence, such a bareboat charter is caught by the prohibition to access EU ports.

If applicable, such vessels may benefit from the exemption or derogations in paragraphs 4, 5, 5a and 5b

11. Can a Russian flagged ship which changes both ownership and flag after the 24 February trade on EU ports?

Last update: 18 May 2022

Article 3ea covers all Russian flagged vessels, as well as vessels that change their Russian flag or their registration, to the flag or register of any other State after 24 February 2022. This prohibition applies irrespective of the ownership of the ship.

12. Was the port access ban extended by the 8th package?

Last update: 10 October 2022

Paragraph 1a of Article 3ea prohibits access to EU ports to any vessel that is certified by the Russian Maritime Registry of Shipping. This prohibition applies irrespective of a vessel’s flag state. The prohibition will be applicable from 8 April 2023.

13. In Article 3ea, paragraph 1a restricts access to ports and locks in the territory of the Union to any vessel certified by the Russian Maritime Register of Shipping. How should ‘vessel’ be understood?

Last update: 24 July 2023

The prohibition set out in Article 3ea, paragraph 1a, applies to all vessels certified by the Russia Maritime Register of Shipping. The specific definition of vessel set out in paragraph 3 of this article does not apply to this paragraph. Therefore, all vessels certified by the Russian Maritime Register of Shipping, irrespective of their type or size, are prohibited from accessing ports and locks in the territory of the Union.

14. In Article 3ea, paragraph 1a, how should ‘certified’ by the Russian Maritime Register of Shipping be understood?

Last update: 24 July 2023

This provision covers any vessels which hold any type of statutory and/or classification certification issued by or on behalf of any flag State by the Russian Maritime Register of Shipping.

The EU has withdrawn the recognition of the Russian Maritime Register of Shipping to act as a recognised ship inspection and survey organisation in the EU³, hence EU-flagged vessels are no longer allowed to have any such certificates. Non-EU flagged vessels with such certifications are banned from ports and locks in the territory of the Union.

15. Can access to ports and locks in the territory of the Union be granted to a vessel that has changed its Russian flag or its registration, to the flag or register of any other State after 24 February 2022, in case it is in need of assistance seeking a place of refuge, or in case of an emergency port call for reasons of maritime safety, or for saving life at sea?

Last update: 24 July 2023

Article 3ea, paragraph 4, provides that the competent authority may provide access to a vessel subject to the prohibitions if it is in need of assistance seeking a place of refuge, for an emergency port call for reasons of maritime safety, or for saving life at sea. This includes vessels that flew the Russian flag prior to 24 February 2022.

16. Do the prohibitions to access ports and locks in Article 3ea, 3eb and 3ec apply to anchorage areas?

Last update: 24 July 2023

As stated in recital 36 of Council Regulation (EU) 2023/1214, the prohibitions relating to port access apply to any vessel, whether it is moored at a port or at anchorage within the jurisdiction of a port of a Member State.

In the case of the Gulf of Finland, those prohibitions relate to any vessel, whether it is moored at a port or at anchorage that is located in the territorial waters or internal waters of a Member State.

In addition, Article 2 point 7 in Directive 2009/16/EC on port State control, covers, if so declared, anchorages: ‘*Ship at anchorage*’ means a ship in a port or another area within the jurisdiction of a port, but not at berth, carrying out a ship/port interface.

³ Per Article 5aa, paragraph 4, of Council Regulation (EU) 833/2014 and Article 1ab, paragraph 3, of Council Decision 2014/512/CFSP.

17. Which vessels are concerned by the prohibitions set out in Articles 3eb and 3ec?

Last update: 24 July 2023

These prohibitions apply to vessels irrespective of their flag of registration calling into a port or lock in the territory of the Union, namely tankers since the provision relates to the transport of Russian crude oil or petroleum products.

18. Articles 3eb and 3ec refer to ship-to-ship transfers or AIS interference at “any point of a given voyage to a Member State’s ports or locks”, how should ‘voyage’ be understood?

Last update: 24 July 2023

The voyage refers to the route the vessel undertakes from the moment it loaded the oil or petroleum products cargo, for as long as it is under way or at sea, such as a vessel laying idle. This covers both direct and indirect routes, irrespective of deviations which occurred from the loading of the Russian oil cargo to the calling at a port or lock in the territory of the Union.

19. How long is a vessel prohibited from accessing ports and locks in the territory of the Union if it is suspected of breaching the prohibitions in Article 3m and 3n by operating a ship-to-ship transfer or turned off its AIS navigation system, by application of Articles 3eb and 3ec?

Last update: 24 July 2023

Such a vessel is prohibited from accessing ports and locks in the territory of the Union as long as it is suspected of breaching the prohibitions in Articles 3m and 3n. Accordingly it cannot access any port or lock in the territory of the Union as long as it transports the relevant cargo of Russian crude oil or petroleum products.

20. If a ship-to-ship transfer takes place and the competent authority has reasonable grounds to suspect a breach of Articles 3m or 3n, are all vessels involved in this operation prohibited from accessing ports and locks in the territory of the Union?

Last update: 24 July 2023

Yes. Due to the ship-to-ship transfer, all participating vessels are suspected of being involved in the breach related to the ongoing transport. Accordingly, these vessels cannot be granted access to any port and lock in the territory of the Union.

21. How do the prohibitions in Articles 3eb and 3ec relate to other maritime safety provisions and prohibitions, such as the banning under the port State control Directive 2009/18/EC or the banning of single hull oil tankers in Regulation (EU) No 530/2012?

Last update: 24 July 2023

The maritime safety network as established and provided for in EU law, including in particular Directive 2009/18/EC on port State control, Regulation (EU) No 530/2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers, Directive 2002/59/EC on VTMIS and, Directive 2009/20/EC on the insurance of shipowners for maritime claims and in particular Article 5.2 therein, remain unaffected and applicable for any voyage and port call to the EU Member States or along EU Member States coastlines. These apply to any offence committed at any point irrespective of when the voyage took place.

22. If a vessel was involved in a breach of the port access ban prohibitions in Articles 3eb or 3ec, but is later sold on to another owner or chartered to another company, can it access ports and locks in the territory of the Union?

Last update: 24 July 2023

As stated in FAQs 19 and 20, a vessel is prohibited from accessing ports and locks in the territory of the Union as long as it is suspected of breaching the prohibitions in Articles 3m and 3n. Accordingly it cannot access any port or lock in the territory of the Union as long as it transports the relevant cargo of Russian crude oil or petroleum products.

That prohibition thus ceases once the suspicion has been cleared or the cargo has been unloaded, hence the subsequent owner will not be affected by it. Of course, if the sale occurs while the suspicion remains or the cargo is still on board, then the prohibition remains.

23. Are vessels calling into ports and locks in the territory of the Union under an obligation to notify ship-to-ship transfers under the Sanctions Regulation?

Last update: 24 July 2023

As required by paragraph 2 of Article 3eb, vessels must notify a scheduled ship-to-ship transfer occurring in the exclusive economic zone of a Member State or within 12 nautical miles from the baseline of that Member State's coast, at least 48 hours in advance. Accordingly, where such an operation has not been notified, competent authorities should not grant access.

24. Can a vessel that has been refused access in a Member States' port or lock on the basis of Articles 3eb or 3ec call into another port or lock in the territory of the Union?

Last update: 24 July 2023

Where a vessel has been refused access, the competent authorities of this Member State will immediately notify all other relevant competent authorities, including port authorities, via the existing arrangements at their disposal and provided by EMSA. This notification obligation aims at avoiding 'port/forum shopping' by vessels. Based on the mutual trust and cooperation that competent authorities should award one another, Member States should refuse access once they receive notification of a refusal that has been issued by any other competent authority.

25. How should 'illegally interfering, switching off or otherwise disabling the automatic identification system' be understood in Article 3ec?

Last update: 24 July 2023

This provision also concerns instances in which a vessel deliberately provides false information by AIS.

Ships are prohibited from illegally interfering, switching off or otherwise disabling except in a situation of imminent danger. It may be the case that a short interference or switching off is accidental, in which case such incidents should be logged.

Such occurrence should be appreciated as part of the broader activity of the vessel. However, disablement for longer periods is an indication that suspicious activity is ongoing. Competent authorities can require and check a vessel's AIS records, via the integrated maritime services in the Union Maritime Information and Exchange System to ascertain whether the AIS was switched off, gaps in signals or providing 'incorrect or false' positions.

That prohibition does not apply in circumstances where the navigation system can be legitimately turned off in accordance with international agreements, rules or standards that provide for the protection of navigational information, such as navigation through high-security-risk waters.

26. How should Member States competent authorities monitor ship-to-ship transfers or the illegal interfering or turning off of a vessel's AIS?

Last update: 24 July 2023

The Commission, with the assistance of the European Maritime Safety Agency (EMSA), will support Member States in the monitoring and notification of suspicious ship-to-ship transfers and incidents of illegally interfering with, switching off or otherwise disabling the shipborne AIS, e.g. for tankers navigating within the 200 nautical miles limit from Member States' coastlines.

It will, in addition to any national system and information, facilitate and support the continuous maritime surveillance and situational awareness at sea as well as exchange and sharing of information using the Union Maritime Information and Exchange System.

27. Articles 3eb and 3ec provide that port access should not be granted if a competent authority has « reasonable cause to suspect » that the vessel is in breach of the relevant prohibitions. How should Member States competent authorities assess a suspicious ship-to-ship transfer or interference/turning off a vessel's navigation system?

Last update: 24 July 2023

The competent authority should conduct an assessment on the basis of a risk analysis.

Accordingly, it should determine whether there are objective indicators from which it can infer knowledge or form suspicion that a vessel (or vessels) is breaching the prohibitions set out in Article 3m (prohibition to import Russian oil) and 3n (prohibition to transport Russia oil above the price cap). This is a factual, evidence-based, risk assessment.

28. What should Member States competent authorities' consider when making such a risk analysis?

Last update: 24 July 2023

The risk assessment can be based on many indicators, that should be weighed as is most relevant based on a specific case.

Such assessment can be aggregated from multiple sources such as [non-exhaustive list]:

- Port of origin and port of calls during the voyage, including mooring at anchorage
- Insurer and coverage of insurance
- Cargo declarations
- Proof of carrying price capped Russian crude oil or petroleum products
- Route the vessel has undertaken in light of the notified cargo to be transporting, and explanations provided in that regard
- History of a vessel's activities, including security notifications
- Past track-record of denials to enter Member States' ports
- Information shared by other Member States, in particular neighboring countries, or the Commission
- Compliance with notification obligations

For ship-to-ship transfers:

- Previously operated ship-to-ship transfers
- Compliance with mandatory notifications and reporting obligations for ship-to-ship transfers under EU and international law, including for the transport of dangerous goods or polluting goods, namely crude oil and petroleum products, as well as security notifications⁴

For AIS switching off or manipulations:

- Frequency of occurrence
- Length of occurrence
- Area of occurrence
- Explanations provided by the vessels when asked about the reasons for the occurrence
- Reasonableness of the route taken by the vessel prior to, or after turning off the AIS, and of the location of the vessel when the AIS was turned off
- Publicly available information about illegal oil operations happening in the area of the occurrence

The Commission with the assistance of the European Maritime Safety Agency (EMSA) will publish notices of behavior at risk of breaching maritime sanctions.

29. What sort of notification obligations can a competent authority take into account when assessing whether it has reasonable cause to suspect a breach of Articles 3m and 3n?

Last update: 24 July 2023

Vessels must comply with various notification obligations under Union and international law depending, amongst others, on their location and the type of cargo they are transporting, for instance there is a reporting of incidents and accident at sea requirement under Union law⁵. Member States shall monitor and take all appropriate measures to ensure that the master of a ship within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area, any incident or accident affecting the safety of the ship and/or, any situation liable to lead to pollution of the waters or shore of a Member State, such as the discharge or threat of discharge of polluting products into the sea (which is an inherent risk when performing e.g. STS operations).

⁴ Regulation 9, Annex I of the (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security implementing the IMO ISPS – Code (Maritime Security Code).

⁵ Article 17, Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system.

In addition, there is also an obligation to notify to the coastal State 48 hours in advance about a ship-to-ship transfer per Annex I to the International Convention for the Prevention of Pollution from Ships, Regulation 42 (MARPOL) and specifies the minimum information to be included in such notifications.

Furthermore the mandatory reporting obligation for Security Notifications also covers ship-to-ship transfers. The ship-to-ship transfers must be reported at the same time as the last ten port calls. This applies to international voyages for ships over 500GT.

Accordingly, the current or past compliance with such reporting obligations is a factual element that can be taken into account by a competent authority when assessing whether there is a reasonable cause to suspect a breach of Articles 3eb and 3ec. The competent authorities can also check a vessel's history of compliance, for instance with paragraph 2 of Article 3eb.