

## **ACCESS TO EU PORTS**

*RELATED PROVISION: ARTICLE 3ea OF COUNCIL REGULATION 833/2014*  
**FREQUENTLY ASKED QUESTIONS – AS OF 10 OCTOBER 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 System<sup>1</sup> (which also links to EQUASIS<sup>2</sup>, 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.

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<sup>1</sup> Established under Directive 2002/59/EC

<sup>2</sup> 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 8<sup>th</sup> 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.