



İstanbul :

Sayı
Our Reference : 1453

10.04.2012

Konu
Subject :**AB ve ABD Yaptırımları - Sigorta Üzerindeki Etki Hususunda Detaylı Bilgiler**

Sirküler No: 195 / 2012

İlgi: Uluslararası Deniz Ticaret Odası'ndan (ICS) alınan 16.03.2012 tarih ve MLC(12)13/IC(12)02 sayılı yazı.

Sayın Üyemiz,

İlgi yazıda, Avrupa Birliği ve Amerika Birleşik Devletleri tarafından, AB veya ABD bayrağı taşıyan ancak bu ülkelerin dışındaki ülkelerle ticaret yapan gemiler için de geçerli olacak şekilde yasalaştırılan, bu tür gemilerin P&I ve tekne sigortaları ve uluslararası CLC Sözleşmesi (Petrol Kirliliğinden Doğan Zararın Hukuki Sorumluluğu ile ilgili Uluslararası Sözleşme - International Convention on Civil Liability for Oil Pollution Damage) ve Bunker Sözleşmesi altında zorunlu mali sorumluluk sigortası gereklilikleri üzerindeki yaptırımların geniş etkisine dikkat çekilmektedir.

AB ve ABD'nin, Suriye ve İran üzerindeki ticaret kısıtlamaları ICS üyeleri tarafından bilinmektedir. ICS, o tarihten beri, konuya ilişkin sorularla karşılaşmakta ve basında, özellikle gemilerin sigortalanması üzerindeki etki ile ilgili olarak bu yaptırımların kapsamı ve uygulanmasına ilişkin bazı kısımların açıklığa kavuşturulması ihtiyacını belirten raporlara rastlamıştır.

Anılan yaptırımlar, AB topraklarında yerleşik gemisahipleri, bir AB Üyesi Ülkede kayıtlı olan ya da bir AB ülkesinin bayrağını taşıyan gemiler ve sicil limanı neresi olursa olsun, AB Üyesi Ülkelerin limanlarına ticaret yapan gemiler için geçerli olacaktır.

IG Kulüpler tarafından sağlanan P&I sigortası konusunda ise, yaptırımlar, diğer türlü AB ülkelerinin yetki alanı dışına düşen gemileri, bu gemiler P&I sigortalarını AB dışında kayıtlı olan bir IG Kulüpten (International Group Club) almış olsalar bile etkileyecektir.

Tüm uluslararası grup kulüpleri kendi kurallarına, özel yaptırım kuvertür sonlandırmaları veya hariç tutma hükümleri veya tedbirsiz ya da uygun olmayan taşımacılık kuvertürü hariç tutma hükümleri eklemiştir. Bu kuralların etkisi, yaptırımlar veya yasağı delen seferler ile ilişkili olarak kuvertürü iptal etmek veya hariç tutmaktır. Bir gemisahibinin böyle bir seferi üstlenmesi durumunda, yükümlülükleri, kendi Grup Kulübü tarafından karşılanmayacaktır.

Bu kısıtlamanın, uluslararası sözleşmelerin gerektirdiği zorunlu sigorta sertifikaları üzerinde de etkisi olacaktır. Bundan, bu sözleşmeler altında zorunlu sigortaya tabi olan yükümlülüklerin ödenmesinin de yaptırımlardaki yasaklara takılabileceği çıkarılabilir.

Uluslararası gemi sicilleri bu sorunun farkında olup, bunlardan en az biri, gemisahiplerini, zorunlu sigorta olmadan denize açılmanın sonuçları konusunda bilgilendirmek için harekete geçmiştir.



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Üyeler, ilişkide sunulmuş olan Liberya Gemi Sicilinin Denizcilik Tavsiye Bildirisine yönlendirilmektedir. Bildiride, gemi sahiplerinin/işletmecilerinin yaptırımlar nedeniyle sigortalarını devam ettirememelerinden dolayı Liberya denizcilik yasa ve düzenlemelerinin ihlalinin ortaya çıkabileceği ve bunun Liberya sigorta sertifikalarını geçersiz kılabilceği belirtilmektedir. Denizcilik Tavsiye Bildirisi, bu durumlarda Liberya yasa ve düzenlemelerinin ihlali için cezalar belirlemiştir. Bu cezalar; geminin alıkonması, geminin yasal sertifikasının durdurulması, Sicilinin iptali ve para cezalarını kapsamaktadır.

Üyelerden, buna benzer bir adım atmışlar ise bunu ICS Sekreteryasına bildirmeleri istenmektedir.

Düzenlemenin uygulamasının son hali henüz sonuçlanmamakla birlikte, Düzenlemenin sigorta açısından etkileri Uluslararası Grup, Üye Devletler ve Avrupa Komisyonu arasında tartışılmaya devam etmektedir. ECSA ve Avrupa Komisyonu arasında da bu Düzenlemenin genel olarak Avrupa taşımacılığına etkisi tartışılmaktadır. Metnin son hali çıkana kadar yasakların ve yaptırımların ölçüsünü tam olarak belirtmek mümkün değildir.

Ancak, mevcut durum karşısında, önlemlerden potansiyel olarak etkilenebilecek olan armatörler; ulusal armatörler birlikleri aracılığıyla, zorunlu sigorta hususları ile ilgili olarak AB ve ABD tarafından açıklık getirilmesini talep etmek üzere hükümetlerine danışmak isteyebilirler. Bunun nedeni, yaptırımların P&I kuvertörü, zorunlu sigorta gereksinimleri ve uluslararası konvansiyonlara göre çıkarılan Mavi Kartlar üzerindeki etkisi ile, devlet tarafından çıkarılan sigorta belgesinin geçerliliğini yitirme olasılığıdır.

Yaptırımların etkisi hususundaki daha başka bilgiler aşağıdaki adresten sağlanabilir:

legal@ics-shipping.org

Bilgilerinizi arz ve rica ederiz.

Saygılarımızla,


Murat TUNCER
Genel Sekreter



İstanbul :

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EKLER:

Ek 1: İlgili yazı ve Eki.

DAĞITIM:

Gereği:

- Tüm üyelere (Web sayfasında)
- Türk Armatörler Birliği
- S/S Gemi Armatörleri Motorlu Taş. Koop.
- Vapur Donatanları ve Acenteleri Derneği
- 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 39, 44, 51, 53 No'lu İMEAK DTO Meslek Komite Başkanları
- İMEAK DTO Şubeleri
- Türk Uzakyol Gemi Kaptanları Derneği

Bilgi:

- Sn. Sefer KALKAVAN
TOBB DTO'ları Konsey Başkanı
- Meclis Başkanlık Divanı
- Yönetim Kurulu Başkanı ve Üyeleri
- Sn. Erol YÜCEL
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16 March 2012

MLC(12)13/IC(12)02

**TO: MARITIME LAW COMMITTEE
INSURANCE COMMITTEE**

Copy: All Full and Associate Members (for information)

SANCTIONS – FURTHER INFORMATION ON IMPACT ON INSURANCE

Action Required: *To note the wide impact of sanctions enacted in the EU and US, even for ships flagged in and trading to countries outside the EU and US, on the P&I and hull insurance of such vessels and on the compulsory liability insurance requirements under the international CLC and Bunkers Convention.*

Further to previous circulars, most recently, MLC(12)03 (23 January, MLC meeting notes), MLC(12)04 (02 February) and MLC(12)05 (14 February) and the discussion at the MLC meeting on 7 February, Members will be well aware of on-going restrictions in trade imposed by the EU and US on Syria and Iran. Since then, the Secretariat has received enquiries, and noted also reports in the press, which indicate a need to clarify some aspects of the scope and application of the sanctions, particularly, with regard to the impact on insurance of ships. Many of the questions raised have been addressed in the extensive FAQs document produced by the International Group of P&I Clubs (the IG), circulated under cover of MLC(12)05. It seems however, that there remains some uncertainty as to the precise scope of the sanctions and particularly with regard to their impact on compulsory insurance cover as required under the international conventions (CLC and Bunkers Convention).

By way of reminder on the scope and applicability of, in particular, the EU sanctions of 23 January, these in fact build upon previous measures in terms of the territory and the entities they apply to. In short, and summarising the information in the IG's FAQs, the sanctions will apply to shipowners incorporated or domiciled in the EU territory, to ships registered in or flying the flag of an EU Member State, and to all vessels, regardless of place of registration, which trade to ports of EU Member States.

The EU sanctions apply also to insurers within the territory, prohibiting them from issuing or maintaining insurance with regard to any sanctionable activity or trade. They will apply to P&I Clubs (and their reinsurers) as well as to hull insurers (and their reinsurers), which are incorporated, domiciled or regulated within an EU Member State.

With specific regard to P&I insurance provided by the IG Clubs, the sanctions will also affect vessels that would otherwise fall outside the jurisdiction of the EU Member States,

even if such vessels have their P&I insurance with a non EU registered IG Club since such non EU Club will be unable to obtain access to the reinsurance from the EU based Clubs that it would otherwise via the IG Pooling Agreement. A non EU Club will also be unable to access market reinsurance cover from EU based reinsurers.

All International Group Clubs have in fact included in their rules, in one form or another, either express sanctions cover termination or exclusion provisions or imprudent or improper trading cover exclusion provisions. The effect of these rules is to withdraw or exclude cover in relation to sanctions or prohibition offending voyages. Thus to the extent that a shipowner undertakes such a voyage his liabilities will not be insured by his International Group Club. Members are referred to Q.9(b) of the IG FAQs which explains the position with regard to EU regulated Clubs and those outside the EU.

This restriction will also have an impact on any compulsory insurance certification required by the international conventions, as remarked upon in Q.11 of the IG's FAQs. It will be noted from this that payment for liabilities that are subject to compulsory insurance under these conventions may also be caught by the prohibitions in the sanctions.

International ship registers are aware of the problem and indeed, the Secretariat is aware that at least one has taken steps to inform their owners of the consequences of vessels sailing without due compulsory insurance. Members are referred to the attached Marine Advisory Notice 05/2012 dated 31 January 2012 from the Liberian Ship Registry (**at Annex**). This notes that a violation of Liberian maritime law and regulation could occur as a result of shipowners'/operators' failure to maintain insurance cover as a result of the sanctions, and which might then invalidate the Liberian certificates of insurance. The Marine Advisory sets out penalties for violation of Liberian law and regulation in these circumstances. These include: detention of the vessel, suspension of the vessel's statutory certificate, cancellation of Registry, and monetary fines.

Members are requested to advise the Secretariat if they know of other ship Registries that have taken similar action.

As a general point, the final implementing Regulation has still to be issued, with discussion continuing in the meantime between the IG and Member States and the Commission, as to its impact on the insurance aspects. Discussion between ECSA and the Commission is also taking place on the impact of the Regulation on European shipping generally. Until the final text is available, it is not possible to say with certainty what will be the scale of prohibitions and sanctions measures.

Based on what is known at the present time however, shipowners that may be potentially affected by the measures may wish to consult with their governments through their national shipowners' associations and to request that clarity in relation to the compulsory insurance aspects is obtained from the EU and the US. This is in view of the serious impact of the sanctions on P&I cover and the knock-on effect on the compulsory insurance requirements and the Blue Cards issued under the international conventions, and the potential invalidation of the State issued insurance certificate. Further information on the impact of the sanctions can be obtained from legal@ics-shipping.org.

Kiran Khosla
Secretary, Maritime Law Committee



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Office of
Deputy Commissioner
of Maritime Affairs

31 January 2012

MARINE ADVISORY: 05/2012

Subject: European Union Sanctions against Iran

Ref: European Union Council Regulation No. 961/2010 on restrictive measures against the Islamic Republic of Iran (2010)

To: All Owners/Operators and Masters of Liberian flagged vessels

Dear Owner/Operator and Master:

This Advisory provides information on the European Union Regulation that covers entities under the jurisdiction of the European Union (EU) which “sell, supply, transfer or export directly or indirectly the goods and technology [specified in Annexes I and II of the Regulation] whether or not originating in the European Union to any Iranian person, entity or body or for use in Iran...” This Regulation took effect on 25 October 2010 and has since been supplemented with additional lists of entities that are sanctioned under the European Union Regulations.

I. Information on the scope of the Sanctions

The European Union (EU) has serious concerns about Iran’s interest in acquiring, and ability to develop nuclear weapons. The EU Council issued its resolution of October 2010 to implement restrictive measures against Iran in order to increase political and economic pressure on the Government of the Islamic Republic of Iran.

- The Regulations mandate the “competent authorities of the EU Member States [to] not grant any authorization for any sale, supply, transfer or export of the goods or technology” if either of the competent authorities has “reasonable grounds to suspect that [such a transaction] would contribute to...Iran’s enrichment-related, reprocessing or heavy water related activities; ...[or] the development of nuclear weapon delivery systems by Iran...” (See Article 3, Paragraph 5 of EU Council Regulation No. 961/2010).
- In further restricting any EU Member State’s transactions with Iran, this Regulation also prohibits “the granting of any financial loan or credit to any Iranian person, entity or

body...the acquisition or extension of a participation in any Iranian person, entity or body...the creation of any joint venture with any Iranian person, entity or body....[or] the participation, knowingly and intentionally in activities, the object or effect of which is to circumvent the prohibitions stated above ” (See Article 11, Paragraph 1, at link below).

- The prohibited goods and technology described in the Annexes of the Regulation cover a wide variety of items including telecommunications and military devices, software technology, nuclear materials, facilities and equipment, chemicals, micro-organisms, toxins, electronics and a host of other specific items.

II. Caution advisement

The Regulation requires Member States of the European Union to enact applicable penalties with respect to infringements of this Regulation and [that Member States] shall take all measures necessary to ensure that they are implemented. (See Article 37, paragraph 1 of the EU Regulation No. 961/2010). As of 23 May 2011, there have been amendments to the EU Regulation that specifically target additional persons, entities and bodies that are associated with Iran. The persons and entities listed in Annex I of Regulation No. 961/2010 is added to the list set out in Annex VIII to Regulation No. 961/2010.

Dealings or transactions may cause failure to maintain liability insurance which could occur as a result of suspension or cancellation of coverage by a vessel's P&I Club when sanctions prohibit the P&I Club/entity activity in accordance with Article 3, Paragraph 5 of EU Council Regulation No. 961/2010. Therefore, in view of the increased international pressure from the European Union and due to the political interest in Iran, ship owners/operators are strongly encouraged to exercise caution relative to transactions involving Iranian entities and/or associated entities.

Relevant issues and Possible Violation of Liberian Maritime Law and Regulations

The Republic of Liberia is not responsible for enforcing the European Union sanctions. However, the European Union holds all individuals, entities and bodies subject to the European Union jurisdiction to the prohibition of “...participation, knowingly and intentionally in activities, the object or effect of which is to circumvent the prohibitions in Article 11, Paragraph 1 of the Regulation. The prohibited goods and technology described in the Annexes of the Regulation cover a wide variety of items.

In this regard, a violation of Liberian Maritime Law and Maritime Regulation could occur as a result of vessel owners/operators' failure to maintain insurance cover required by the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BCLC) and the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC). These are mandated in Liberian Maritime Regulation 2.35 pursuant to both liability Conventions to which the Republic of Liberia is a Party.

Liberia has international responsibility to implement and uphold the aforementioned liability Conventions in that the Liberian Administration accepts P and I “blue cards” to support the respective Liberian CLC and BCLC certificates issued to Liberian flagged vessels. A particular P&I Club (entity) may fall within the ambit of the EU sanctions to the extent that it is prohibited to issue and maintain liability insurance relationship with any entity associated with Iran.

It is understood that the members of the International Group of P and I Club have the same rules that apply to all their members. Owners may have already been provided circulars advising that “insurance cover would be null and void and of no effect whenever it became illegal.” In addition to applicable legal prohibitions, some P&I Club rules may preclude coverage for voyages and activities which are prohibited by law.

The Indemnity and Protection insurance cover (required by Liberian Regulation 10.342, third party liability insurance) for crew protection including repatriation (required by Liberian Law Section 342 and Regulations 2.66(2) and 10.342) would also be invalidated. Consequently, the Liberian CLC and BCLC certificates (for both tanker and non-tanker vessels) issued to the particular vessel would also effectively be nullified, ceased and of no effect. Consequently, such action thereby renders no liability cover in force as required by the respective international Conventions which are applied by Liberian Law and Regulation 2.35. In effect, the particular vessel would be out of compliance having been without liability coverage and Owners/Operators will be in violation of Liberian Law and Regulations.

The Administration’s action when violation of Liberian Law/Regulation is discovered.

Penalty for violation of Liberian Law and Regulations in this regard includes the following:

- Detention of the vessel, which may include specific restriction of movement that could affect trading/navigation of the vessel;
- Suspension of the vessel’s statutory certificates including the Registration Certificate;
- Revocation of Permanent Certificate of Registry and Cancellation of Registry;
- Possible monetary fines; and
- If the Administration conducts an investigation and there is failure on the part of the Owners/Operators, and or Master and crew to cooperate, then it will be considered another related offense for which penalty can be imposed.

Related action in accordance with European Union Sanctions

In view of the wide reach of the sanctions imposed by the European Union, it is essential to be vigilant to avoid the risks in contravention of the sanctions. By its sanctions regime, the European Union may limit or even terminate any commercial interest a foreign entity has with the European Union member States or any European Union entity, which may also be damaging to an entity’s global commercial activities.

These sanctions may have a direct and immediate impact on the vessel’s anticipated/ planned port calls to, or in the region of Iran. Ship owners/operators and Masters are to remain aware of the rapidly changing climate with respect of the matter of sanctions against Iran imposed by the European Union. Accordingly, Ship owners/operators should bring the contents of this Advisory to the attention of the Masters of their Liberian flagged ships and instruct them to exercise due care so as to avoid contravention of the European Union Sanctions that may lead to conditions resulting in violation of Liberian Law and Regulations.

Note: The full text of the EU Regulation No. 961/2010 is available at the following internet link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF>

III. Point of Contact

For further information regarding the issuance of this Advisory, please contact the Marine Investigations Department at +1 (703) 251-2407/2415; +1 (703) 790 3434 or via e-mail at investigations@liscr.com.
