

Prohibition to access EU ports

FREQUENTLY ASKED QUESTIONS – AS OF 27 April 2022

Q1. How is the port access ban monitored?

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.

Q2. What is meant by the term “relevant international conventions”?

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

Q3. How can EU port authorities and operators know if a Russian vessel has changed flag?

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.

Q4. How to address a ship transporting goods the transport of which may be authorised?

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.

¹ Established under Directive 2002/59/EC

² Electronic Quality Shipping Information System

Q5. Is it prohibited to conduct ship-to-ship operations with Russian flagged vessels?

Ship-to-ship operations can occur in different cases, namely a ship-to-ship operation between an Russian flagged vessel and a third country flagged vessel in international waters, a ship-to-ship operation between Russian and EU-flagged vessels, and 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 this Regulation 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 an Russian flagged vessel could not call.

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

Q6. Under the derogations in Article 3ea, how should goods be loaded and unloaded?

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.

Q7. Can Russian flagged recreational crafts berthed in EU port remain or leave this port?

Russian flagged recreational ships that were berthed in the port of a Member State before the 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 its assets, including recreational crafts, should be frozen.

Q8. Can a Russian flagged vessel which entered an EU port under the exemption in paragraph 4 be authorised to leave?

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.