



# Navigating sanctions due diligence in marine insurance

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# Agenda

## Sanctions

- What are sanctions?
- Sanctions authorities

## Sanctions compliance in shipping

- Expectations: OFAC guidance 2020
- Due diligence as a defence
- Sanctions and insurance cover

## Sanctions landscape concerning Russia

Some examples





# Sanctions

- **political trade restrictions**



# Sanctions authorities



# Sanctions in Sweden?

## **UN and EU sanctions applicable in Sweden**

### **The Swedish Sanctions Act (1996:95)**

- ✓ Fines (both personal and company)
- ✓ Prison up to 4 years

But only if:

- ✓ Gross negligence
- ✓ Intent

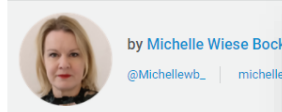
# Consequences of non-compliance

- Civil and/or criminal penalties
- Breach of contract and potential remedies
- Business disruption
- Blacklisting
- Freezing of assets
- Reputational damage
- Restrictions on possibility to trade in USD
- Loss of investors and funding (denial of loan facilities/bonds)
- **Loss of insurance cover**
- Damage bank relations and payment flow
- Executive officer blacklisted
- Visa ban on executive officers

## Blacklisted Italian shipowner bankrupted by US sanctions now removed by Ofac

Palermo-based PB Tankers was ensnared in extended Venezuelan-Cuban sanctions after six of its seven tankers were added to the Specially Designated Nationals list, along with their associated companies in mid-April. Ofac de-listed PB tankers and all its owned and managed ships on July 3

04 Jul 2019 | NEWS



by Michelle Wiese Bock  
@Michellewb\_ | michelle.b

PB Tankers said its vessels are ready to return to service following its bankruptcy, including the jurisdiction

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## Ukraine crisis: Russian cargo ship seized in the English Channel by French authorities

The French authorities have discovered a Russian cargo ship in the English Channel



## Schlumberger subsidiary to pay \$1.4M for Russian sanctions violations



By Aaron Nicodemus | Tue, Sep 28, 2021 10:28 PM



A Houston-based subsidiary of oilfield services company Schlumberger has been fined approximately \$1.4 million by the U.S. Treasury's Office of Foreign Assets Control (OFAC) for selling goods to a Russian-based energy firm that was under U.S. sanctions.



# EU sanctions

Applicable to:

- ✓ any **national of an EU Member State** (inside or outside the territory of the EU) who is a ;
- ✓ any **legal person, entity or body** which is **incorporated or constituted under the laws of an EU Member State** (whetehr acting inside or outside the territory of the EU) ;
- ✓ any legal person, entity or body in respect of **any business done in whole or in part within the EU**;
- ✓ **within the territory** of the EU, including on board **any vessel under the jurisdiction of an EU Member State**.

Accordingly, unlike US secondary sanctions, EU sanctions do not apply to transactions and/or entities that do not have an 'EU nexus.' OR?



## Why do EU issue sanctions?

*“Restrictive measures (sanctions) are an **essential tool** in the EU’s common foreign and security policy (CFSP), through which the EU can **intervene where necessary** to prevent conflict or respond to emerging or current crises. In spite of their colloquial name ‘sanctions’, EU restrictive measures are **not punitive**. They are **intended to bring about a change in policy or activity** by targeting non-EU countries, as well as entities and individuals, responsible for the malign behaviour at stake.”*



## Proportionate?

*‘EU sanctions are carefully targeted, and designed to be **proportionate** to the objectives they seek to achieve. As such, they are aimed at those responsible for the policies or actions the EU wants to influence, **while reducing as much as possible any unintended consequences.**’*

# US sanctions

**Primary sanctions** are those that apply to “**US persons,**” which is defined as:

- ✓ US citizens and permanent residents,
- ✓ entities incorporated under the laws of the United States (and their foreign branches)
- ✓ and persons physically located in the United States.

Primary sanctions also apply to **transactions in US dollars,** which transit through the US financial system.

**Secondary sanctions** do not require a ‘US nexus’ and apply to **non-US persons.**



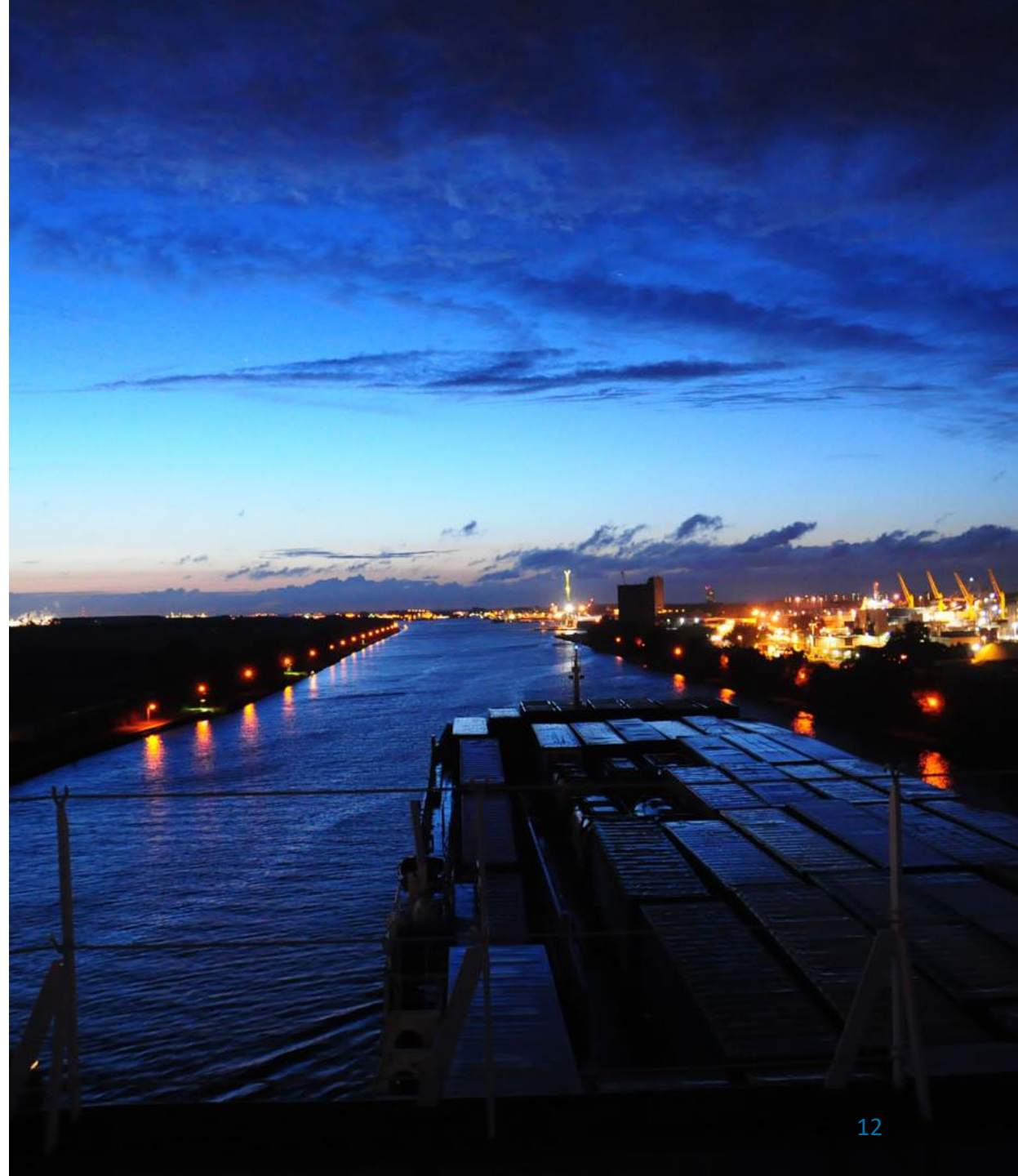


# Sanctions compliance in shipping

# Expectations: 2020 OFAC Guidance

## **Guidance to Address Illicit Shipping and Sanctions Evasion Practices**

- Marine Insurance
- Flag Registry Managers
- Port State Control Authorities
- Shipping Industry Associations
- Commodity Traders, Suppliers and Brokers
- Financial Institutions
- Shipowners, Operators and Charterers
- Classification Societies
- Vessel Captains
- Crewing Companies





# OFAC's (& OFSI's) Guidance

## Why is this Guidance significant?

## What due diligence expectations are set?

- Sanctions compliance program
- Know Your Customer and Counterparty
- AIS tracking - assessment
- Supply chain due diligence: origin of cargo, STS operations
- Contractual language
- Industry information sharing





# Impact on Marine insurers

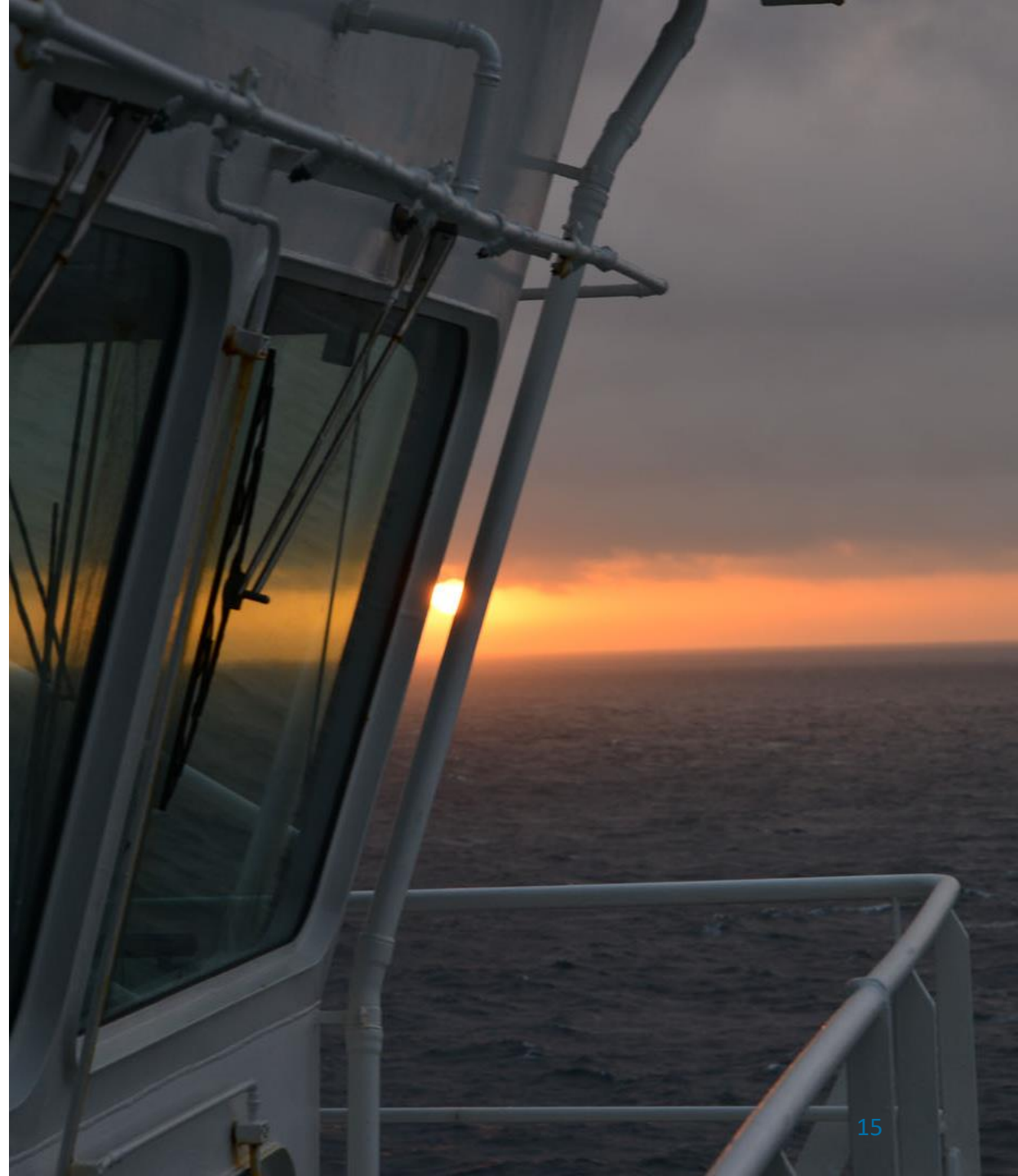
Materially shifted expectations on due diligence:

- Extensive sanctions compliance programs
- Increased KYC
- Vessel tracking: focusing on AIS gaps, high risk areas, vessel type & cargoes
- Active reach out
- Termination/cesser



# Sanctions and insurance cover

- ✓ Operational to ensure compliance and lawfulness of trade
- ✓ Breach of contract to expose insurer to sanctions risks
- ✓ Each party must perform its own due diligence
- ✓ Potential conflict of interest
- ✓ Risk appetite: Club versus member?
- ✓ Payments – legality versus banks' risk appetite





# Trends in 2021/2022

## **AIS Manipulation instead of shut off/gaps**

- Spoofing or AIS misuse to replicate other vessel's identity

## **Identity tampering**

- Physically altering a vessel's appearance (repainting, tarpaulins) and identity (name & IMO number) or altering the registered identity

## **False Documents**

- False vessel and cargo documentation

## **Ship to ship transfers**

- Disguising the true origin of illicit cargoes





Navigating the sanctions  
landscape concerning Russia

# Sanctions imposed against Russia prior to February 2022

Sectoral sanctions targeting the oil & gas sector

Targeted financial sector sanctions

Individual designations ("blocking sanctions")

Export controls (arms embargo, dual-use goods)

Sanctions related to Crimea



# Sanctions imposed against Russia since 24 February 2022

Targeted financial  
sector sanctions

Export restrictions  
(sectoral and export  
controls)

Comprehensive  
sanctions targeting  
Donetsk, Luhansk,  
Zaporizhzhia and  
Kherson

Individual  
designations  
("blocking  
sanctions")

# Intorduced at unprecedented pace

## **Coal + 'other solid fossil fuels' + certain fertilisers**

- ✓ winddown period applied to contracts concluded before 9 April 2022
- ✓ 10 August applied in full
- ✓ EU FAQ on 10 August: worldwide application
- ✓ rescinded in EU FAQs September 2022





Wide ranging: hundreds of items subject to restrictions

### **Article 3i**

Cargoes that falls within the regulations Annex XXI 'Other products' such as

- ✓ Caviar
- ✓ wood charcoal

### **Article 3h**

- ✓ Luxury goods

### **Article 3g**

- ✓ Iron and steel



# EU takes the lead: sectoral sanctions on oil

## EU 6<sup>th</sup> Sanctions Package June 2022

- ✓ ban on purchase, import and transfer, directly or indirectly, of Russian origin oil and petroleum products

### Exemption:

- ✓ crude oil and petroleum products allowed until 5 December 2022/ 5 February 2023 under contracts concluded before 4 June 2022





# Article 3m ban on transportation into EU

Prohibits **import, purchase and transfer, directly or indirectly**, of crude oil or petroleum products:

- Originating in Russia; or
- Exported from Russia

Prohibits the provision of **financial assistance**

- ✓ Insurance and brokerage falls within the term "financial assistance"





# Article 3n – ban on transportation outside EU

- ✓ **ban on providing financial assistance** – including insurance – for transport of crude or petroleum products from Russia to outside EU

Exemption:

- ✓ if the price cap regime is followed



# Exemption to Art. 3n: the G7 price cap on oil

Introduced with EU's embargo on Russian oil imports 5 December 2022 / petroleum products 23 February 2023

Goal:

- ✓ Keep oil flowing to world markets while denying shipping insurance and finance for oil cargoes priced above the cap

Insurance sector central to enforcement



# The price cap regime

Price set by G7 coalition every 90 days:

- USD 60 crude oil
- USD100 products premium to crude
- USD 40 products discount to crude

Applies:

- ✓ throughout the seaborne voyage
- ✓ To reloaded cargoes
- ✓ commingled/blended cargoes
- ✓ until customs clearance/first landed sale

# Due diligence measures

## **Legality of trade**

- ✓ Understand what you are asked to do
- ✓ Identify cargo via use of CN (HS) code e.g. 2710 /2709
- ✓ Determine if the product originates in Russia
- ✓ Discharge port outside EU?
- ✓ Signed price cap attestation from contractual counterparty

## **Think risk as well as legality**

- ✓ KYC
- ✓ Do not close your eyes for the obvious
- ✓ Avoid clever constructions – circumvention prohibited
- ✓ Your bank's risk appetite?



# EU's 11th package – what now?

## Focus on anti-circumvention measures

? Access to EU ports denied for sanctions breach and suspected breach:

- ship-to-ship operations in EU member states EEZ (200Nm from land) must be reported 48 hours in advance
- unauthorised AIS manipulations/interruptions

? Certain goods made from raw materials originating in Russia?



- With you at all times