

# 中国船东互保协会文件

中船保保字[2012]11 号

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关于国际保赔协会 2012 年 8 月 14 日对欧盟理事会制裁伊朗的新措施的  
常见问题解答的通函

各会员公司：

协会于 2012 年 4 月 1 日发布了中船保保字（2012）5 号《关于欧盟理事会第 267 号条例确认了对伊朗石油运输的制裁的通函》介绍了欧盟理事会 2012 年 3 月 23 日所通过并即时生效的 267/2012 号条例的相关内容及其对于协会保险可能产生的影响。

在这一条例的基础上，国际保赔协会集团于 2012 年 8 月 14 日发布了欧盟对伊朗制裁的新措施常见问题解答更新版（FAQ），全文请参见附件（内容以英文版为准，中文译本仅供参考）。

协会在此提请各会员公司务必注意以下几点：

此 FAQ 应该结合国际保赔协会集团于 2012 年 2 月 8 日，3 月 27 日和 5 月 25 日发布的 FAQ（参协会保字 2012 第 8 号通函及协会网站相关内容）一起来解读。

协会的分保/共保人都处于欧盟境内，必须遵守该条例的规定。因此，协会的做法只能与其保持一致。

会员公司如有任何问题，请咨询协会经理机构。

特此通函。



关键词：中船保、伊朗、制裁、通函

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中国船东互保协会

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## **European Union Measures against Iran - Council Regulation 267/2012 dated 23 March 2012 - Frequently Asked Questions – Updated on 14 August 2012**

### **Background**

On 23 January 2012 The European Union Foreign Affairs Council agreed to introduce further measures impacting on trade that would or could support the furtherance of the Government of Iran's nuclear aspirations. Specifically the Council introduced measures to prohibit the trade and transportation of crude oil, petroleum products and petrochemical products. Those measures were set out in **Council Decision 2012/35**. On 23 March 2012 the Council issued **Regulation 267/2012** implementing the provisions of the Decision and repealing **Regulation 961/2010**. The Group has since engaged in a process of ongoing correspondence and dialogue with the UK Treasury and the UK Business Department, to discuss the interpretation and application of the Regulation.

The following FAQs should be read in conjunction with, but supersede, the FAQs issued on 8 February 2012, 27 March 2012 and 25 May 2012 and cover the following current issues;

- The legal Status of EU Council Regulation 267/2012;
- The expired "grace periods";
- Impact on shipowners. For the purpose of these FAQs, the term shipowners includes charterers, with the sanctions potentially applying equally to both.
- Impact on the cover provided by clubs

It should also be noted that these FAQs address solely the ramifications of Council Regulation 267/2012 and do not address other nationally or internationally applicable sanctions measures which may impact on trade to and from Iran and the provision of insurance and reinsurance cover in relation thereto.

### **1. What is the legal status of the Regulation?**

Regulation 267/2012 became effective on 24 March 2012 and gives effect, subject to the modifications therein, to **Council Decision 2012/35**. It also repeals and replaces **Regulation 961/2010**. The provisions of the Regulation, in so far as these relate to the shipment of Iranian crude oil, petroleum and petrochemical cargoes and the insurance arrangements relating thereto, are effective from the dates stipulated in the Regulation, in particular in the provisions contained in Articles 11 – 14.

## **2. What is the effect of the expiration of the "grace periods" provided for in Articles 12 and 14 in the Regulation?**

The Regulation contained two "grace periods" for the continuation of the performance of contracts which were concluded **prior to 23 January 2012**:

- (i) For petro-chemical products, until 1 May 2012, and
- (ii) For crude and petroleum products, until 1 July 2012.

The grace periods expired at 23:59 on 30 April 2012 and 23:59 on 30 June 2012 respectively and no longer apply except in respect of contracts that are subject to Regulation 267/2012, articles 12.1(b) and 14.1(b). These provisions allow for pre 23 January 2012 contracts and their ancillary contracts (necessary for the execution of such contracts) to continue where the crude, petroleum or petrochemical cargo or proceeds derived from their supply is for reimbursement of outstanding amounts to persons, entities or bodies under the jurisdiction of EU Member States.

Articles 12.1(c) and 14.1(c) provide exceptions from the prohibitions on the purchase, import or transport of defined crude oil, petroleum products and petrochemical products, providing the products had been exported from Iran prior to 23 January 2012, or where the export was made pursuant to a pre 23 January trade contract or contract ancillary thereto during the grace periods, or where the export was made under the article 12.1(b) and 14.1(b) exceptions referred to above.

The performance of contracts referred to in the exceptions in articles 12.1 (b) and (c) and 14.1 (b) and (c) are subject to the following notification requirements.

### **Notification Requirements**

Provisions are included in the Regulation which require the contractual performing party to give a minimum 20 working days' notice of the activity or transaction to the competent authority of its Member State. There remains some ambiguity in the drafting regarding which contracts are intended to be covered by this notification requirement and whether this would extend to ancillary contracts such as transportation contracts. The prudent approach would be to assume that the requirement applies to an EU shipowner transporting Iranian crude oil, petroleum or petrochemical products to EU or other destinations. In practice this could give rise to problems where late notification of, or change of, voyage orders prevent a shipowner from giving the requisite minimum notice. In such circumstances shipowners should give as much notice as possible to the relevant Member State competent authority of the intended activity or transaction. It does not appear that this notice requirement would extend to a shipowner which is not established in an EU member state.

The notification requirement does not, however, apply in relation to P&I insurance or reinsurance cover arrangements.

### **3. How will the relevant prohibitions in the Regulation impact on shipowners?**

Since the grace periods ended on 1 May 2012 and 1 July 2012, unless one of the limited exemptions set out in FAQ 2 applies, it is prohibited for EU regulated shipowners to purchase, import or transport Iranian crude oil, petroleum products and petro-chemical products regardless of the place of loading, and non-Iranian crude oil, petroleum products and petro-chemical products that are being exported from Iran.

Non-EU regulated shipowners may continue to transport Iranian crude oil, petroleum and petrochemical products, but only to non-EU destinations, subject always to any other applicable sanctions legislation.

The prohibitions are specific to the named cargoes and do not generically refer to LNG and LPG (liquefied petroleum gas) cargoes. Annex V to the Regulation (list of "petrochemical products") does refer to ethylene, propylene and butadiene, elements of which may be found in LPG cargoes so if such cargoes are being contemplated for loading it would be prudent to request product analysis details and to ascertain whether the cargo does contain any of the prohibited products identified in Annex V.

### **4. Is there a defence under the Regulations?**

Regulation 267/2012, article 42.2 provides "the measures set out in the present regulations shall not give rise to liability of any kind on the part of the natural or legal persons, entities or bodies concerned, if they did not know, and had no reasonable cause to suspect that their actions would infringe these prohibitions". To date, what constitutes sufficient evidence to allow shipowners to rely on this defence is untested. It is recommended that shipowners exercise due diligence in identifying the source of cargoes to ensure they are not subject to sanctions.

### **5. How will the insurance and reinsurance prohibitions in the Regulation impact on P&I cover?**

All International Group clubs have included within their rules either express sanctions cover termination or exclusion provisions or imprudent or improper trading exclusion provisions. The effect of those rules is to withdraw or exclude insurance cover or preclude recovery in relation to liabilities incurred whilst a vessel is performing sanctions or prohibition offending voyages. To the extent that a shipowner undertakes such a voyage, his liabilities will not be insured by his International Group Club. If in doubt, members should liaise with their club to clarify the precise nature of that club's rule(s) on sanctions.

Not all International Group clubs are incorporated, domiciled or regulated within the EU. In relation to the shipment of the prohibited Iranian cargoes or cargoes being exported from Iran for delivery inside or outside the EU, how will the amended measures relating to third party liability and environmental liability insurance and reinsurance, apply to EU and non-EU regulated clubs?

**(i) Cargoes for delivery within the EU**

EU and non-EU regulated Clubs may not provide cover to EU and non-EU shipowners save where one of the limited exemptions referred to in FAQ 2 and set out in articles 12.1 (b) and (c) and 14.1 (b) and (c) applies.

**(ii) Cargoes for delivery outside the EU**

**(a) EU regulated clubs**

The purchase, import or transportation of the prohibited Iranian cargoes or cargoes which have been imported from Iran outside the EU by a non-EU shipowner will not contravene the Regulation. However, insurance and reinsurance cover relating to such purchase, import or transportation provided by EU domiciled or regulated insurers and/or reinsurers is prohibited under the Regulation and (e.g. for carrying shipowners) such transportation would trigger the clubs' sanctions cover exclusions. It is therefore prudent for shipowners to seek advice from their club before agreeing to fix voyages of products that fall within the scope of the Regulation and its annexes.

**(b) Non-EU regulated clubs**

The International Group clubs which are not EU regulated will not be directly subject to the insurance prohibitions contained in the Regulation.

However, the non-EU clubs' rights of recovery under the International Group pooling arrangements from clubs which are EU regulated will be impaired, and rights of recovery under the International Group Reinsurance Contract and other reinsurances taken out for the benefit of the clubs' members will also be impaired. This is because the EU clubs and any EU based participant in the International Group Reinsurance Contract will be subject to the sanctions, which will prohibit payment out by those entities to the non-EU club. As a result, the non-EU regulated International Group clubs have incorporated provisions in their rules to exclude cover where, as a result of sanctions measures, the pool and/or reinsurers are themselves subject to prohibitions on cover/payment.

## **6. Bunkers**

Although the provisions of the Regulation do not expressly extend the prohibitions on transportation and insurance to oil or petroleum products used as ship's bunker fuel or to lube oils, the generic descriptions of oil and petroleum products could include bunker fuels and lube oils. To date, based on the advice received from the UK's Treasury Department, shipowners have been advised to exercise diligence e.g. to make enquiries regarding the origin of bunker fuel and lube oil supplied to their vessels and to avoid stemming Iranian fuels and oils.

In response to requests for further clarification made to the UK's Competent Authorities, they have now indicated their view that fuel oil and lube oils used for the purposes of propulsion of the ship and the operation of the vessel's machinery (i.e. not fuel oil or lube oils carried as cargo) would not trigger the prohibitions contained in the Regulation. This interpretation would be consistent with the presumed intention behind the express exemption (contained in Annex IV) from the prohibitions in relation to aviation fuel of Iranian origin. The UK's views are not legally binding, however, and it should particularly be borne in mind that they may not be shared by the Competent Authorities of other EU Member States.

It is, therefore, recommended that shipowners should continue to exercise due diligence in identifying the source of bunker fuel stems and lube oil where there are grounds to suspect that these may be of Iranian origin and where possible to avoid Iranian stems.

## **7. Cargo residues and Slops**

In response to enquiries the UK Competent Authorities have confirmed that the presence on board of Iranian oil or petroleum product residues in cargo tanks or in slops would not contravene the Regulation.

## **8. Containerized cargo (e.g. fuel oil in flexi-bags)**

See FAQ 4 above. Shipowners are recommended to check the details provided by shippers and their agents in respect of containerised cargo to ensure those cargoes (as declared) are not subject to sanctions. Particular attention should be given to containerised cargo originating from Iran. It has not been suggested that shipowners have a positive duty to open and inspect every container originating from Iran to verify their contents, but it is recommended that shipowners exercise due diligence when dealing with Iranian cargoes and entities.

August 2012

# 欧盟对伊朗制裁的新措施—2012 年 3 月 23 日欧盟理事会 267/2012 号条例—常见问题解答（FAQ）

2012 年 8 月 14 日更新版

## 背景

2012 年 1 月 23 日，欧盟对外事务委员会决定采取进一步的措施，对能够支持和加强伊朗的核目的的贸易施加影响。具体而言，欧盟理事会已采取新措施，禁止原油、石油产品和石化产品的贸易和运输。该新的制裁措施载于欧盟第 2012/35 号决议。欧盟理事会于 2012 年 3 月 23 日颁布了 267/2012 号条例，用于实施该决议内容，并撤销理事会 961/2010 号条例。国际保赔协会集团一直与英国财政部联系并会晤，商讨条例的释义与适用问题。

下述常见问题解答应该结合国际保赔协会集团 2012 年 2 月 8 日、3 月 27 日和 5 月 25 日发布的 FAQ 来解读，并涵盖以下问题：

- 欧盟理事会第 267/2012 号条例的法律地位；
- “宽限期”的影响
- 对于船东的影响
- 对于保赔协会承保风险的影响

此 FAQ 仅涉及欧盟理事会 267/2012 号条例所产生的影响，不考虑其他可能影响到伊朗进出口贸易和提供相关保险及再保险的各国和国际制裁措施。

## 1、 欧盟理事会第 267/2012 号条例的法律地位

该条例于 2012 年 3 月 24 日起生效，用于实施理事会第 2012/35 号决议，并对其有所修改。该条例还撤销并取代了理事会第 961/2010 号条例。该条例中关于装运伊朗原油、石油产品、石化产品，以及与其相关的保险措施的规定自条例中所述时间起生效，特别要注意第 11 条—第 14 条中所包含的规定。

## 2、“宽限期”的影响



条例再次明确了对于 2012 年 1 月 23 日之前签订的合同的继续履行有两个“宽限期”：

- (1) 对于石化产品，到 2012 年 5 月 1 日；和
- (2) 对于原油和石油产品，到 2012 年 7 月 1 日。

该宽限期分别于 4 月 30 日 23 点 59 分和 6 月 30 日 23 点 59 分到期，除了对第 267/2012 号条例中第 12.1 (b) 和 14.1 (b) 中所规定的合同外，已不适用于其他合同。这些条款允许豁免可延伸适用于 2012 年 1 月 23 日前订立的合同中规定的义务的履行，或在必要的附属合同中的义务的履行，前提是该伊朗原油、石油产品、石化产品的供应以及由其所得的利益，是于 2012 年 1 月 23 日前签订的合同中所明确规定的，用于对成员国领土内或其管辖权内的个人或公司订立的合同的已付金额的补偿。

第 12.1 (c) 和第 14.1 (c) 中规定了，对于购买，进口，和运输特定的原油，石油产品和石化产品，只要该产品在 2012 年 1 月 23 日之前已经从伊朗出口，或是该产品的出口是在宽限期内根据签订于 2012 年 1 月 23 日之前的合同或辅助合同进行的，或者出口是根据第 12.1 (b) 和 14.1 (b) 而进行的。

第 12.1 (b) 和 (c) 以及 14.1 (b) 和 (c) 中规定的除外情况，需要适用以下通知义务。

### **通知义务**

条例中还新增加了一个通知条款，要求履行合同的一方，至少提前 20 个工作日，将其计划实施的行动或交易，通知其所在成员国的主管机构。该条文有些定义模糊，对于此通知义务应适用于哪些合同，以及通知义务是否延伸至辅助合同，例如运输合同，没有明确的解释。但是比较谨慎的做法是假定该通知义务适用于运输原油、石油产品或石化产品至欧盟国家或其他目的地的欧盟船东。在实务操作中，当航次任务指令延误或是变更航次任务时，船东可能就无法在规定的

期限前给出通知。在这种情况下，船东应该就其计划实施的行动或交易，给予成员国主管机构尽可能详细的通知。目前尚看不出这一通知义务会延伸适用于非设立于欧盟成员国内的船东。

此通知义务不适用于相关保赔保险及其再保险的安排。

### **3、 条例中的相关禁令对船东有何影响**

因相关的宽限期已经于即 2012 年 5 月 1 日和 2012 年 7 月 1 日终止,除了 FAQ 2 项下规定的有限的情况外，欧盟船东购买，进口或运输伊朗的原油，石油产品和石化产品是被禁止的，不管其自何地装运，或者是自伊朗出口的非伊朗原油、石油产品或石化产品。

非欧盟船东仍可以继续运输此类货物，但只能送至非欧盟管辖的目的港，而且还要以不违反其他适用的相关制裁立法为前提。

禁运仅适用于以上指明的特定货物，而液化天然气和液化石油气则不包含在内。条例附件 5 的石化产品明细表中列有乙烯 (ethylene)，丙烯(propylene)，和丁二烯(butadiene)，这些物质很可能存在于液化石油气产品中。如果计划运输此类货物，则谨慎的做法是要求货方提供货物成分检测的详细信息，以确认是否包含附录 5 中所列明的禁运货物。

### **4、 条例下是否存在抗辩？**

第 267/2012 号条例中第 42.2 条规定“在相关自然人或法人，实体或机构不知情，或没有合理理由怀疑其行为会违反条例中的禁令的情况下，则其不应承担任何责任。” 目前为止，船东怎样才能算提交了足够的证据来援引这一抗辩，还未被证实过。建议船东尽其谨慎义务，尽量识别货源，以避免受禁令制裁。

### **5、 条例中的保险和再保险禁令将如何影响保赔保险的承保**

国际保赔协会集团中的所有协会在其条款中都有明示的制裁终止保险条款，或

是除外条款，或是不适当或轻率的交易除外条款。这些条款的作用是针对船舶在进行违反制裁或禁运措施的航次时所产生的责任，撤销其保险或使之除外，或者是取消其向协会追偿的权利。当船东执行这样的航次的时候，其责任将不会被国际保赔协会集团的成员协会承保。如果有疑问，会员应联系其协会以明确协会条款对于制裁的规定。

国际保赔协会集团中并非所有协会都在欧盟内成立、注册并受其法律监管。对于运输源于伊朗的禁运货物到欧盟以内或欧盟以外，条例中关于第三方责任保险和环境责任保险以及再保险的修改措施，将对受欧盟管辖的协会和非受欧盟管辖的协会产生何种影响？

#### （1）运至欧盟内目的地的货物

除了 FAQ 2 项下列出的，并在条例第 12.1 (b) 和 (c) 以及 14.1 (b) 和 (c) 中规定的有限的除外情况下，受欧盟管辖和非受欧盟管辖的协会都不能对欧盟船东和非欧盟船东提供保险。

#### （2）运至欧盟以外目的地的货物

##### （a）受欧盟管辖的协会

非欧盟船东购买，进口或运输被禁运的伊朗货物或是已经从伊朗出口到欧盟以外国家的货物，并不违反条例。但是处于欧盟境内或受欧盟管辖的保险人和/或再保险人，为此类购买、进口或运输提供保险和再保险是为条例所禁止的，且（对于进行此类行为的船东）将会触发协会的制裁除外条款。因此，船东应谨慎行动，在安排运输条例和其附录所涉及的货物之前，先咨询其协会的意见。

##### （b）非受欧盟管辖的协会

国际保赔协会集团中非受欧盟管辖的协会将不会直接受到条例中所规定的保险禁令的影响。

但是，非受欧盟管辖协会在国际保赔协会集团分摊协议下的向受欧盟管辖协会

追偿的权利将会受到损害，并且其国际保赔协会集团再保险合同及其他为了集团内成员利益而进行的再保险安排下的追偿权利也会受到损害。这是因为受欧盟管辖的协会和国际保赔协会集团再保合同中任何处于欧盟境内的参与方，都将受此制裁的制约，他们将不能向非受欧盟管辖的协会进行付款。因此，非受欧盟管辖的协会一般其条款中都设置了除外条款，当国际保赔协会集团分摊和/或其再保险人受到制裁措施的影响，而导致其承保及赔付受到制约时，即可启动该条款，停止保险。

## **6、 燃油**

虽然条例的条文并没有明确表明运输和保险禁令延伸适用于用作船舶燃油和润滑油的石油和石油产品，但是石油和石油产品的种类描述可能会包含了燃油和润滑油。至目前为止，根据从英国财政部得到的意见，已经建议船东尽谨慎义务，例如询问供应其船舶的燃油和润滑油的来源，避免加源自伊朗的油。

英国相关管理机关针对近期向其提出的询问，表示他们认为用于船舶动力和船舶机械运行的燃油和润滑油可能不会触发条例中的禁令。此解释与条例中针对源于伊朗的航空燃油的明示除外（附录 4）的立法目的一致。但是，英国的这种解释并不具法律约束力，而且还应该注意欧盟其他成员国的管理机关不一定认可这种解释。

因此在有理由怀疑燃油和润滑油可能源自伊朗时，船东应该继续尽其谨慎义务，确定燃油和润滑油来源，避免加源自伊朗的油。

## **7、货物残留和废油**

英国相关管理机关针对近期的询问，已经确认在船上的货舱或废油中存在伊朗石油或石油产品残留将不会违反条例。

## **8、集装箱货物（例如集装箱液袋中的燃油）**

见上述 FAQ 4。建议船东检查发货人和货代提供的有关集装箱货物的具体信息，以便确

认货物（申报）不在禁运范围之内。应该特别注意源自伊朗的集装箱货物。虽然船东并没有主动义务去打开检查每一个源自伊朗的集装箱以确认其中的货物，但是建议船东在处理伊朗货物和实体时，应该尽其谨慎义务。