



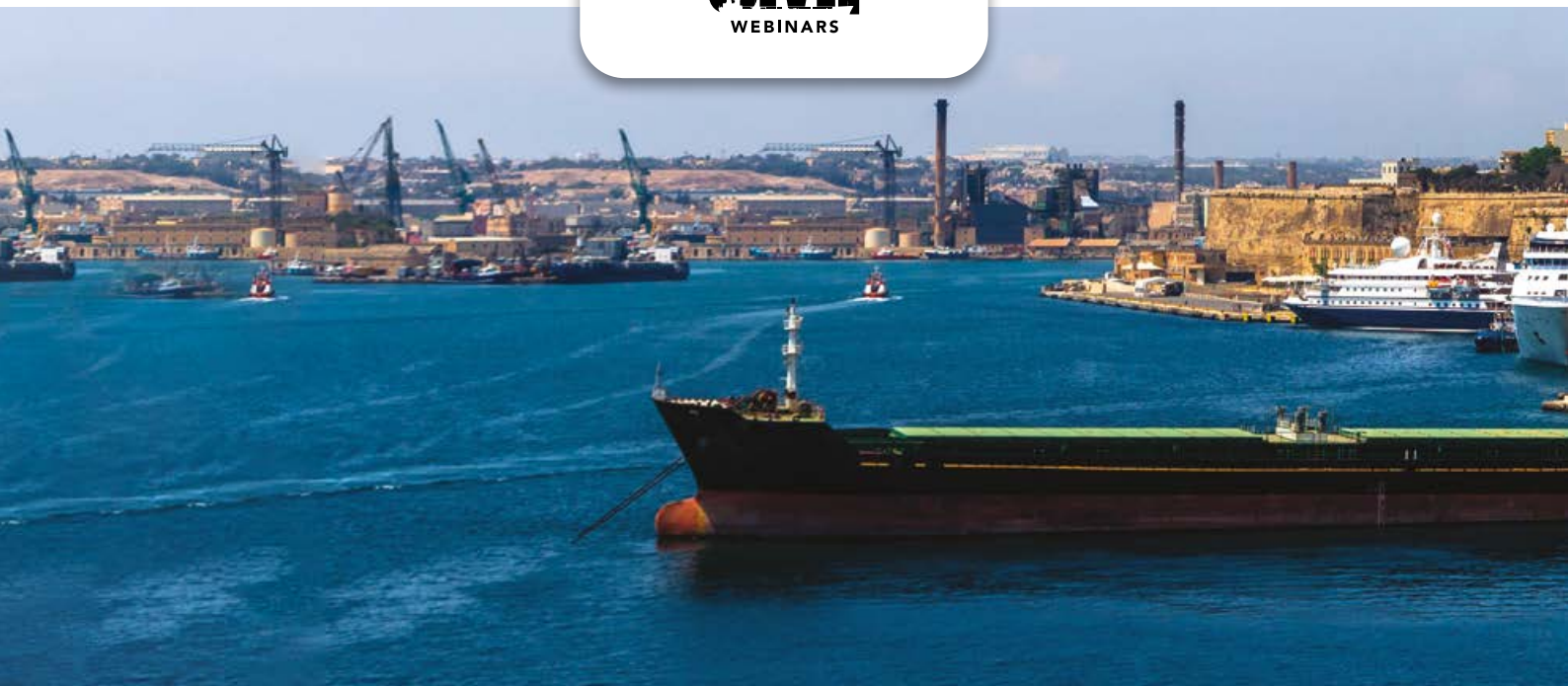
# Sanctions and their impact on shipping:

## A Maltese perspective

SMI's latest round table debate focused on the important issue of international sanctions and their implications, from the perspective of the Malta maritime cluster, strategically located in the central Mediterranean and home to the largest Ship Registry in the European Union. Below are edited excerpts from the discussion, a full recorded version of which can be viewed on the SMI website.

*Panellists included:*

**Dr. Jan Rossi**, Senior Associate - Ganado Advocates Malta; **Capt. David Bugeja**, Chief Officer and Harbour Master - Ports & Yachting Directorate (Transport Malta); **Ms. Genevra Forwood**, Partner - White & Case (Brussels); and **Riccardo Landini**, CEO NAI International (Navigazione Montanari SpA). Moderated by **Sean Moloney**, CEO of Elaborate Communications.



**Sean Moloney**

Welcome everybody to the latest in our series of SMI, Ship Management International round tables, this one run in association with Ganado Advocates of Malta, so I shall ask Ganado's Dr Jan Rossi to kindly introduce the debate.

**Jan Rossi**

Good day and thank you, Sean. I'm a shipping lawyer with Ganado Advocates' shipping practice here in Malta and over the past year, like many other people, we've had to face a lot of queries from our clients, essentially shipowners and yacht owners as well as brokers and operators on how the day to day activities are impacted, or shall be impacted, by the current sanctions regime which is constantly evolving and changing. Primarily, the reason why Malta is so affected by this is twofold. Firstly, from a geographical point of view, the sanctions do affect certain operations such as bunkering, ship to ship transfers and the like that are carried out here in Malta by the local marine services industry for reasons of our strategic location, and secondly due to the large amount of shipping organisations and vessels that are registered under Malta as a leading flag.

**Sean Moloney**

Thank you very much, Jan. Can I ask the other panellists to please introduce themselves and give an opening perspective?

**David Bugeja**

Hello everyone and thank you for inviting me to participate in this interesting debate. I am a master mariner by profession and have been doing the job of harbour master for the last 25 years. As people may appreciate, in Malta that not only covers

one port but all the ports and also, as rightly mentioned by Jan, all the activities and commercial operations taking place in our local and territorial waters and therefore we are the interface through the local ship agents in respect of clearing ships to carry out services and operations in Maltese ports. Normally we are dealing with safety of navigation issues and coordinating ship movements without having to deal with this new tier of diligence and verifications prior to us clearing the numerous vessels and the enquiries we receive.

**Genevra Forwood**

My name's Genevra Forwood and I'm a partner at White & Case, which is an international law firm and I lead the EU and the UK sanctions teams within our firm. We work very closely with colleagues in Washington DC and various other jurisdictions as well to provide joined-up advice on sanctions and so my perspective is as a sanctions lawyer emerging from the avalanche of sanctions that we've just been coping with in this last year following the Ukraine invasion. From our perspective, it's unbelievable the number of ways in which various companies have been impacted by these sanctions. What's clear is that sanctions have moved into the mainstream of compliance and risk management of any company, whatever the sector. It's no longer a niche area that you only need to be concerned with if you are dealing in specific sensitive activities or jurisdictions.

**Riccardo Landini**

My name is Riccardo Landini, I'm the CEO of NAI International in Malta, which is a company part of the Malta NAI Group and Italian Shipowners. We own 20 tankers so we are very, very impacted by the sanctions in the transporting of oil and its



products. We have a daily work to be done to make sure that our voyages, our transportation are not under sanctions so the due diligence that we are forced to do adheres to everything.

### Sean Moloney

Thank you, everyone. So before we come onto our first question can I ask you please Geneva to provide an overview of where we are in the sanctions space?

### Genevra Forwood

Ok, this is not going to be exhaustive because of time constraints but I'd like to set the scene by saying what's changed: why everyone is talking about sanctions now, what's different from a couple of years ago and what's changed in terms of how sanctions are adopted and enforced.

When we're talking about EU sanctions, as a foreign policy instrument they're very specific and a matter of EU law because it's a combined exercise by the EU on the one hand and the 27 Member States on the other. So, in terms of adopting sanctions, they have to be adopted by unanimity by the 27 Member States and they're enforced at the national level by the different competent authorities, so it's not as easy as just one country like the UK or the US taking a view and adopting the sanctions that they see necessary. One thing that we've really seen in the last year is the alignment between the EU and its G7 partners and other aligned jurisdictions and this is where it gets tricky - you can't assume that just because you're okay under one set of sanctions, you're okay under the other because while there's a lot of devil in the detail, there's also a lot of broad alignment.

Then on the sanctions themselves, there's the sheer number and intensity of the sanctions packages that we've seen. We're now awaiting the 11th EU sanctions package against Russia and just to put that into perspective, in 2014 after the Crimean invasion, there was just two packages and very quickly people were able to figure out what those meant and move on. Now what we're having is the landscape changing every two or three months and just when you think you've figured out what you can and you can't do, then it all changes again. So it's just this constant, constant effort to keep up and the burden on internal compliance teams has just been massive.

Also I think what's worth flagging is that we've not just got these kind of classic sanctions with blacklisted parties subject to an asset freeze in the EU or a SDN (Specially Designated National) in the US where you're checking off a list and then you think okay, there's no sanction person involved, I'm fine. That's absolutely not the case. First of all, you need to look back at your ownerships to make sure that there's no one in the background who owns or controls the person you're dealing

with, which throws up a number of challenges but also there are many, many other sanctions that have been developed, which are specially designed now to target the Russian economy in various ways.

So again, just gliding over them all, we've got export bans on massive numbers of goods and technologies to Russia and then you've got import bans so goods coming out the other way and what's important to flag here in the maritime sector, it's not just the actual export in itself, it's all the associated services that you might find, such as providing insurance or financing or brokering and technical assistance and other what we might call peripheral activities that are targeted as well.

### Sean Moloney

Okay, thank you very much Geneva. Now I'm going to bring in Riccardo on this. You're a shipowner, you're involved in the tanker sector... what are your thoughts on the extent to which the industry is aware of what it's facing?

### Riccardo Landini

Well, I have to say that independently on our personal take on the war, we must be aware of the sanctions and on the implication in not following the rules. The transport of goods, as Geneva was saying, is clearly affected by the sanctions and we have to see many aspects and many sides of the business, going deeply into the diligence we are forced to do to perform on any kind of voyage because at the end, any genuine mistake can have disastrous consequences for any company involved in transporting goods by sea.

### Sean Moloney

David, with your background and current responsibilities, how concerned are you about the level to which the industry is aware of all of this?

### David Bugeja

Well, I think the shipping industry is aware, but I don't think it is aware of the severity of the situation in some areas. What we experience is that shipowners and ship managers like Riccardo and similar operations, they are taking this quite seriously and doing all the due diligence because as was rightly mentioned, the repercussions can be very, very serious. But the problem we face, I think, is with the intermediaries, the service providers, the ship agents, the ship chandlers, the bunker operators in respect of support services. I think in those areas, these service providers may sometimes be assuming that they do not have to do anything because someone else has done it for them and if I'm getting a request and the authority is clearing it or the shipowner is asking for it, then it means that everything is alright and we should go ahead and if we are stopped, why are





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we stopped? So I firmly believe that there are the, let's say, real shipowners, the managers and maybe the legal firms that take this seriously and check the authorisation but there is a range of other players within the sector that maybe are not dedicating enough effort to be part of the due diligence process.

### Sean Moloney

Thank you, David. Jan, as part of Malta's legal profession how are you dealing with this and what are you saying to clients in transactions like transfer of ownership of vessels or the registration of vessels under the Maltese flag?

### Jan Rossi

Well, initially what I have observed is a total shift in approach towards the sanctions. So whereas in the initial months, many shipowners and operators in the industry attempted to work within the remit of those sanctions and keep that function to Russia and Russian interests, few were the ones that would actually keep up. Instead, many players decided to shift their business elsewhere, even if that resulted in a loss of income, purely because they were wary of the consequences of breaching sanctions and also because they did not have the resources available to ensure that their operations are in line with the sanctions, especially the smaller individuals which David refers to, such as ship agents. For a lot of businesses that work in and around the port, it is very difficult for them to keep up with the barrage of sanctions that are constantly published.

Insofar as transaction work is concerned, yes, it did definitely affect how this is done. Firstly, sellers in any S&P (Sale & Purchase) transaction are requesting additional documents on their buyers and who owns their buyers in order to ensure that any of those buyers are not sanctioned or not connected to the sanctions. Additionally, questions are also asked where the vessels will be used because certain sanctions also extend to the geographical use of those assets so that is one perspective. When it comes to yachts, these are specifically targeted because yachts are considered to be luxury goods so the specific prohibitions are the same of yachts to Russian interests or for use here around Russia. So yes, I mean, I believe that whereas the early days perhaps not everybody was abreast of the sanctions, I would say that for the large part it is very difficult not to be aware of them 14, 15 months down the line.

### Sean Moloney

Thanks, Jan. Looking at how sanctions have shaped the way the ship registries operate and with the Russian 'dark fleet' hitting the headline on an almost daily basis, what steps should a jurisdiction like Malta be taking to ensure that it is not flagging vessels involved?

### Jan Rossi

Well firstly - and this was a novelty - the Registry now seems to be screening parties to S&P transactions whereas in the past, this was not being done. You now approach the Registry with a bill of sale or other details of both the seller and particularly the buyer, which will be a new client of the Registry and is being screened versus sanctions. So that is something which is rather novel.

Secondly, many Russian shipowners used to use the Malta flag because it was very popular with Russian interests as an underlying registry with subsequent registration in Russia as the overlying registry particularly in navigation of routes which are within Russia's internal waters. Many of those clients, to describe them that way, have voluntarily left the Registry or have been asked to leave the Registry and find an alternative flag or have been advised by people such as myself that look, unfortunately your time working with EU jurisdiction is up, you need to start thinking of alternative options before the loop gets tighter and tighter and then there's no way out.

### Genevra Forwood

On the point of screening and ownership checks, we all know in theory what needs to be done but actually doing that in practice can really be extremely difficult actually to find out who's behind it when you have complex structures, many layers, trusts etc. So you have these situations when you can only get to a place where you're comfortable saying 'well, I don't have reason to suspect that this person owns or controls this entity despite their involvement' and so you do get very difficult judgment calls to make there.

Unfortunately, the approach that we would all like in theory is to be able to go to an authority and get a clear view - are we or are we not able, is this person covered or not covered? - and that's not really a fruitful avenue just because the authorities are not necessarily providing that sort of guidance. So it does leave companies themselves having to take a view there and having to document having reached a particular conclusion.

### Sean Moloney

Just moving on from what Genevra said there, Riccardo, you're a shipowner involved with the carriage of crude oil, how have sanctions impacted your interaction with other actors in the industry such as charterers and insurers?

### Riccardo Landini

Well, our Maltese flag fleet is carrying both crude and refined products and this sanction that heavily impacted the day-to-day operation and activity in our companies. We have been forced to increase procedures in prefixing voyages like accurate due diligences, use of a specialised structure of intelligence, producing new sanction clause also to be inserted in the charter



party and collecting a declaration from our clients. That seems a lot of paper to be asked for and obtained and it is indeed.

Also, because shipping has always been a sector where privacy has been used makes this a bigger point to be overcome when you perform due diligences because not all our clients are ready to disclose the information we are requesting. So every day it's difficult to decide and to choose what our ships have to carry and which client are to be followed in their activities.

#### Sean Moloney

David, let me bring you in on this because you talked earlier about the interaction with agents and also with ship chandlers. How has this changed and what sort of questions are you now asking, what sorts of checks and balances and inspection are you doing to ensure that everything is as it should be?

#### David Bugeja

Well, actually the first challenge was internal and by internal, I mean when we're talking with our own personnel mainly in functions like port operations and vessel traffic services, which start questioning even from an employment point of view whether this is our job. You know, we're here to do a safety of navigation task to manage shipping movement and now you're asking us to be detectives or to do all this and so that's the first challenge that you're changing the functions of your personnel but one way or another, that can be dealt with.

In respect of the other one, it can be quite difficult or you see, you know, why are you doing this because prior to such detailed, complex functions, for example, for a loaded tanker to be provided bunkers was a very straightforward situation. You notify that you are a loaded tanker with a product X loaded in a particular port, you're coming here to anchor for 12 hours to receive bunkers, the bunker barge goes provides you and within 12 hours the job is done and you depart to your next port. Now, the moment that we say 'but we want more details of your cargo and the origin and the owners and the beneficiaries and the next port', where sometimes the reality of the business is they do not have an export, and they are still waiting for instructions whether to discharge this in A or B port or whether they are going to proceed,' it all becomes very complex and very sensitive.

Importantly, for a country like Malta, we all need to appreciate that in respect of the local harbour and port-related and anchorage operations, these value-added services that we provide, these services of bunkering, of changing crews out at sea, of facilitating the provisions of stores, of doing transshipment operations, they are a core part of our economy because our domestic market is very, very small. So if, for example, you have a bunker operator who's employing 40 people ashore and have

three bunker barges with crew and everything, the moment you start disrupting their service, the client can say 'oh, it was too complex there, I will go to the next place, I'll just navigate a couple of hundred miles to the east or to the south or whatever and I'll get the job done' so that's what this means for us.

#### Sean Moloney

That brings it onto the important point of the effectiveness of sanctions. Are they doing more damage to European interests than the effect they're having on the intended targets such as Russia? Jan, let me bring you in on this. It seems that there's an awful lot of work for lawyers dealing with all of this. What are your thoughts on that point about the effectiveness of sanctions and who's winning and who's losing?

#### Jan Rossi

Well, that's a very tricky question and I'll reply based on what I've seen so far as our legal practice is concerned. Yes, as you correctly point out, initially the sanctions brought in a lot of work insofar as legal advice and services. I myself, unlike Geneva, am not specialised in sanctions so I had to learn as I went along in advising my clients because essentially I'm a shipping lawyer. However, that type of work is starting to fizzle out. Why? Because as David correctly pointed out, many operators are choosing alternative places to do business, alternative jurisdictions, which are less complex. Complexity increases costs, it increases stress levels and businesses will always go for the easier option. So, whilst initially yes, it did create a flurry of legal activity and legal work, what I am now starting to see is that potential clients are moving elsewhere, including outside the European Union, which automatically means that certain business has decreased.

#### Sean Moloney

So, are we going to be seeing then a shift in this type of flagging activity to Open Registries away from the European flags because of what Geneva said earlier about once the EU or the Commission decides on something, it is binding across all EU Member States?

#### Jan Rossi

I believe so, yes. It's already happening and I believe it will continue to happen.

#### Riccardo Landini

One thing that Jan said really rings true. That is the high cost that every company is facing now to comply with sanction. We are being forced to hire new resources to set up a sanction compliance programme and legal costs are usually increased by the sanction.

#### Genevra Forwood

Yes, there is a tendency to say 'well it's going to cost us too much

to figure out these rules, let's just de-risk completely, let's just stop all business with Russia or Belarus or whatever'. But there may be things that you can do legitimately and then having the absolutely right advice to be able to take that position can become a competitive advantage.

**Riccardo Landini**

Correct but to say 'we are not heading to Russia or from Russia' is not the solution because wherever you go, you have to still comply with the sanctions.

**Sean Moloney**

So what are the challenges and problems for jurisdictions like Malta surrounding these geopolitical issues?

**David Bugeja**

I think the first thing we need to realise that the world is a very big place and if the European markets and in particular our Mediterranean region becomes too visible and too complex, as we have already mentioned business will move elsewhere. For the European shipowners, ship operators and shipping ports, there's going to be some of us who will lose dearly or are already doing so - and once you lose certain business, it's very difficult to bring it back – while there are other places where circumventing is the order of the day.

**Genevra Forwood**

Yes, it's a very real challenge having a common understanding of these sanctions and I have to say that another thing you see with sanctions is that it's never a black line. There's always an area of grey and where it's grey because of the risks inherent in sanctions it's sort of de facto that people don't go there anyway. So, actually the effect of sanctions is even broader than what's written in the regulations in practice.

**Sean Moloney**

And what if a stakeholder within the shipping industry, a Chandler or bunker supplier, has fallen foul of sanctions unwittingly?

**Genevra Forwood**

There is a provision in the EU Sanctions Regulations which says that you will not be liable if you did not know and had no reason to suspect that what you were doing contravenes sanctions. So it's called the due diligence defence, which is good, and so it's not strict liability, which is already something but in order to invoke that, you have to show that you took reasonable steps, right? So, when we're talking about the screening of counterparties, it's not enough just to say well, oh you didn't pop up on a list, a reasonable diligence would be to ask 'who's your UBO (ultimate beneficial owner)' and do what you can to find out who's behind the operation and then screen those persons as well. So a sort of wilful blindness is not going to get you out, you really have to make efforts to be able to invoke that defence.

**Sean Moloney**

Jan, can I bring you in on this? What is the process here in Malta on that?

**Jan Rossi**

Yes, so the competent authority here in Malta is the Sanctions Monitoring Board and that is the competent authority that is referred to in the EU Regulation. The Sanctions Board is set up in virtue of law in terms of the National Interest (Enabling Powers) Act and amongst many functions, one of its key functions is awarding rulings on whether certain proposed transactions fall within the remit of the sanctions or not. So definitely over the past 12 to 15 months, the amount of requests for guidance as well as formal resubmitted applications has increased significantly. In addition to ad hoc rulings, the Board periodically publishes guidance notes and FAQ's which assist players within the local industry. And to also latch onto what Genevra mentioned, the other side of the coin is that if you are willing to understand what's going on, there's definitely a competitive advantage both as a player in the industry in the shipping world and also as a legal services provider.

**Sean Moloney**

Okay, thank you all very much indeed for what has been a really good debate. ●



Ms Genevra Forwood



Capt. David Bugeja



Dr. Jan Rossi



Riccardo Landini

