
Global Jurisdictions Implement Russian Oil Ban and Price Cap Policy—New Compliance Expectations for Industries Involved in Global Oil Trade

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Introduction

A ban on services related to the maritime transport of Russian-origin crude oil sold above a pre-determined price cap of \$60 per barrel began on December 5, 2022, with a similar price cap ban related to other Russian-origin petroleum products expected to begin February 5, 2023, with a yet-to-be-determined price level. The United States, G7, the European Union and Australia (collectively, the Price Cap Coalition) [established](#) this extraordinary measure to limit global revenues flowing to the Russian Federation following Russia's invasion of Ukraine in 2022, while still maintaining the Russian supply of oil to global markets.

The new price cap policy will create complex new sanctions compliance and recordkeeping obligations for global industries involved (directly or indirectly) in Russian energy trade, including the insurance, trade finance, banking, brokering, navigation, shipping and refinery industries. The price cap at \$60 per barrel is below the Brent international index for crude oil, which has been [trading at](#) about \$87 per barrel (though the price for Urals crude [has been trading](#) below \$80 since early November). The Price Cap Coalition reportedly will review the price cap regularly, with the intent to keep the cap at least 5 percent below the market price.

Members of the Price Cap Coalition have previously announced outright bans with various effective dates on the import of Russian-origin crude oil and petroleum into their jurisdictions (unless otherwise authorized). The United States banned the import of each category by Executive Order in March 2022; the EU's and UK's respective bans on crude oil imports become fully effective on

December 5, 2022, and their bans on petroleum imports, on February 5, 2023. Accordingly, the new price cap policy will complement the existing outright import bans in these jurisdictions. It will allow persons from the Price Cap Coalition member countries to provide certain covered services in support of global Russian crude trade destined for export *to third countries* only when such exports are priced at or below the price cap. As such, the price cap is **intended** to provide sufficient incentive for Russian producers to continue to sell oil to the global market, especially to low- and middle-income countries. Meanwhile, Russia has **announced** that it will “not accept” the cap.

The price cap announcement underscores the extremely coordinated approach among the US, the EU, the UK and other allied governments on Russia sanctions measures, resulting in severe prohibitions or restrictions on trade in Russian energy products but stopping short of imposing full blocking sanctions against Russia’s largest energy giants.

This Client Alert provides an overview of these regulatory developments in the United States, the European Union and the United Kingdom.

US Russian Crude Oil Price Cap Implementation

Oil Price Cap – A Ban With Exceptions. On November 22, 2022, the US Department of the Treasury’s Office of Foreign Assets Control (OFAC) released **Final Guidance** (OFAC Guidance) interpreting certain prohibitions under **E.O. 14071** (“Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression”) and a subsequent **Determination** of November 21, 2022, under the E.O. that prohibits certain services related to the maritime transport of Russian crude oil, unless it is conducted at or below the price cap. OFAC released an additional **Determination** on December 5, 2022, setting the price cap at \$60 (collectively, the Determinations).

Effective at 12:01 a.m. on December 5, 2022, the Determinations prohibit the “exportation, reexportation, sale, or supply” from the United States or by a US person of a list of “Covered Services” relating to the maritime transport of crude oil to “any person located in the Russian Federation.” The Determinations also include a general authorization permitting the export of Covered Services if the seaborne Russian oil is purchased at or below the price cap. Such services are prohibited if the seaborne Russian oil is purchased above the price cap. The Covered Services subject to the Determinations are:

- Trading/commodities brokering
- Financing
- Shipping
- Insurance, including reinsurance and protection and indemnity
- Flagging
- Customs brokering

The Determinations and [related FAQs](#) also clarify that certain Russian oil trade is exempted from the price cap when such crude oil is loaded onto a vessel at the port of loading prior to 12:01 a.m. Eastern Standard Time on December 5, 2022, and unloaded at the port of destination prior to 12:01 a.m. Eastern Standard Time on January 19, 2023.

The OFAC Guidance provides additional clarity on the scope of the prohibitions defined in the Determination. *First*, it notes that the price cap does not include the cost of shipping, freight, customs or insurance, which instead must be invoiced separately and at commercially reasonable rates; OFAC explicitly views the billing of any commercially unreasonable costs as a sign of evasion of the price cap.

Second, for the Covered Service of “Financing,” the OFAC Guidance clarifies a variety of specific requirements for the financial services industry. The prohibition on financial transactions above the price cap is broad, covering “a commitment for the provision or disbursement of any debt, equity, funds, or economic resources, including grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, and import or export advances.” However, this definition excludes the “processing, clearing, or sending of payments by banks” where the bank (1) is operating solely as an intermediary and (2) does not have any direct relationship with the person providing services related to the maritime transport of Russian oil as it relates to the transaction. Similarly, services with respect to “foreign exchange transactions and the clearing of commodities futures contracts” also fall outside the scope of Financing. Financial institutions must also undertake specific due diligence efforts to benefit from the compliance “safe harbor,” as described below.

Third, the OFAC Guidance details when the ban “starts” and “stops” for various Russian oil transport scenarios. It applies from the moment oil is sold by a Russian entity for maritime transport and continues until the oil has first cleared customs in a jurisdiction other than the Russian Federation. After the Russian oil has cleared customs, the price cap no longer applies to further onshore sale. Once the Russian-origin oil is “substantially transformed”—meaning, is refined or otherwise processed such that it “loses its identity and is transformed into a new product having a new name, character, and use”—it is no longer considered to be Russian-origin oil; it is thus not subject to the price cap and may be transported by sea again. However, if Russian-origin oil exits a jurisdiction via maritime transport after having cleared customs and without “substantial transformation,” then the price cap would continue to apply. Persons assessing whether crude oil is of Russian origin may rely on a certificate of origin but should exercise caution if they have reason to believe that such certificate has been falsified or is otherwise erroneous.

Fourth, the OFAC Guidance clarifies that “crude oil” covers all articles defined under subheading 2709.00 of the Harmonized Tariff Schedule of the United States ([Chapter 27](#)).

Fifth, the OFAC Guidance clarifies that three sets of services are excluded from the scope of Covered Services: (1) medical evacuation or other emergency services for crew members; (2) health, travel or liability insurance for crew members; and (3) classification, inspection, bunkering and pilotage. We recommend that companies exercise caution when considering the provision of other categories of services that are neither specifically listed as Covered Services nor excluded under this provision.

Sixth, E.O. 14071 contains an express prohibition on “facilitation” by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a US person or within the United States. In other words, a US person cannot take behind-the-scenes actions, such as approving, financing or guaranteeing, that would assist a non-US person in undertaking actions prohibited by the relevant regulations.

Compliance Safe Harbor. Anticipating the compliance challenges for US persons engaged in the provision of Covered Services for the trade of Russian crude at or below the price cap, the OFAC Guidance sets forth an elaborate recordkeeping and attestation framework that creates a “safe harbor” from enforcement for US persons demonstrating adherence to the policy. Under this framework, each party in the supply chain of Russian oil shipped via maritime transport must demonstrate or confirm that the Russian oil has been purchased at or below the price cap in order to be shielded from strict liability for sanctions breaches where the providers inadvertently deal in the purchase of Russian oil sold above the price cap due to falsified or erroneous records provided to them by others.

The guidance divides service providers into three tiers based on the directness of their involvement:

- **Tier 1** – Commodities brokers and traders, as well as any other actors with direct access to price information, must maintain and retain price information (e.g., invoices, contracts, receipts, proofs of accounts payable) indicating that Russian oil for maritime transport was purchased at or below the price cap. Moreover, Tier 1 actors may also need to provide attestation to lower-tier actors that such oil is in compliance with the price cap.
- **Tier 2** – Financial institutions, ship and vessel agents, commodities brokers, and others who “sometimes are able to request and receive price information from their customers” are required to request and retain price information from their customers, including Tier 1 actors, to the extent practicable, or a signed attestation from their customers when a direct receipt of price information is not practicable. In particular, the safe harbor requirements for “financial institutions” depend on whether “transaction specific” or “general” financing is provided in connection with a particular transaction.
- **Tier 3** – Shipowners and carriers, flagging registries, insurers (including reinsurers and protection and indemnity (P&I) clubs), and others “who do not regularly have direct access to price information” can receive safe harbor using sanctions exclusions clauses in policies or contracts or signed attestations from higher-tier customers.

A customer's or counterparty's refusal or reluctance to provide the necessary documentation or attestation should be considered a red flag. The availability of the safe harbor also requires service providers to retain relevant records for five years, in accordance with [31 C.F.R. § 501.601](#), in addition to complying with the ordinary requirements of OFAC's risk-based due diligence expectations.

Other US Restrictions on Russian Energy. The price cap discussed above supplements other US restrictions on the Russian energy sector generally. For example, E.O. 14066 ("[Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine](#)") had previously prohibited all imports into the United States of Russian-origin crude oil, petroleum, and petroleum fuels, oils, and products of their distillation, as well as liquefied natural gas, coal and coal products (unless otherwise authorized). Accordingly, even if a US service provider complies with the price cap policy described above, the trade in Russian oil itself could only be directed to a non-US jurisdiction.

EU Russian Crude Oil Price Cap Implementation

EU Oil Import Ban. In its Sixth Sanctions Package, effective June 4, 2022, the EU prohibited the purchase, import or transfer of seaborne Russian crude oil and petroleum products, with certain exceptions and phaseout periods, under Art. 3m of [Regulation \(EU\) No 833/2014](#), as amended by [Regulation \(EU\) 2022/2367](#) (Regulation). As of December 5, 2022, almost all of the relevant exceptions and phaseout periods related to transactions involving seaborne crude end; the exceptions for petroleum products end as of February 5, 2023.

Article 3m of the Regulation also contains a mechanism for future extension of these restrictions to crude oil delivered by pipeline from Russia to EU Member States, subject to derogations for jurisdictions that are particularly dependent on these pipeline imports. Poland and Germany voluntarily committed to phasing out pipeline imports even before this mechanism takes effect.

EU ban on services related to transport of Russian crude oil. The Sixth Sanctions Package also added Article 3n to the Regulation. Article 3n, as amended since, prohibits the trading, brokering or transport of restricted Russian crude oil and petroleum products to third (non-EU) countries, as well as the provision of related technical assistance, brokering services, or financing or financial assistance, including insurance, with applicable transitional periods also ending on December 5, 2022 (for crude oil), and February 5, 2023 (for petroleum products). The relevant terms are defined in Art. 1(c) and (d) of the Regulation, as follows:

'Technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service and may take forms such as instruction, advice, training, transmission of working knowledge or skills, or consulting services, including verbal forms of assistance.

'Brokering services' means:

- the negotiation or arrangement of transactions for the purchase, sale or supply of products and technology or of financial and technical services, including from a third country to any other third country, or
- the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country.

In its FAQs on the price cap at point 19, discussed below, the European Commission notes that brokering services should be interpreted broadly, as including “all related brokering services such as commodities brokering, insurance brokering, customs brokering, [and] ship brokering.”

EU price cap for purchases of Russian crude by third countries. The EU's Eighth Sanctions Package, effective October 6, 2022, amended the foregoing provisions to introduce an enforcement mechanism for a price cap on exports of Russian crude oil and petroleum products to third countries. The price cap has now been set by the [Price Cap Coalition](#).

As is the case in the United States and the United Kingdom, the price cap mechanism operates as an exception to the ban contained in Article 3n of Regulation 833/2014. This exception allows the trading, brokering or transport to third countries of Russian crude oil or petroleum products, where they are sold at a price per barrel that is lower than the cap, as well as the provision of related technical assistance, brokering services, and financing or financial assistance, as reflected in Art. 3n(6)(a) of the Regulation. These services continue to be prohibited in regard to oil cargos sold at a price that is higher than the cap. Shipping services for oil sold at a price higher than the cap are also prohibited. The price cap applies only to maritime transport and does not extend to pipeline transport.

In addition, Art. 3n(6)(b) provides for an exemption from applicable restrictions for crude oil and petroleum products (the relevant customs/tariff designations, or CNs, are listed in Annex XXV) that originate in a third country and are only loaded in, departing from or transiting through Russia. Both the origin and the owner of those products must be non-Russian to fulfill the requirements of this exemption.

The law also provides for a wind-down period: Art. 3n(6)(d) of the Regulation provides that the prohibitions discussed above do not apply to crude oil purchased above the price cap that is loaded onto a vessel at the port of loading prior to December 5, 2022, and unloaded at the final port of destination prior to January 19, 2023.

The price cap is listed in Annex XXVIII of the Regulation, after adoption by the Council of the EU of [implementing legislation](#) on December 3, 2022. The functioning of the price cap mechanism is to be reviewed as of mid-January 2023 and every two months thereafter, with the goal of maintaining a price cap that is at least 5 percent below the average market price for Russian oil and petroleum products.

Other exceptions. Furthermore, the prohibition of Art. 3n does not apply to the transport by vessel to Japan of crude oil falling under CN 2709 00 commingled with condensate or originating in the Sakhalin-2 Project. Moreover, exemptions for technical assistance, brokering services, and financing or financial assistance related to such transports are allowed as provided under Art.3n(6)(c) of the Regulation until June 5, 2023.

Anti-circumvention measures. There are additional anti-circumvention measures that will become effective once the price cap takes effect. Vessels used to transport crude oil or petroleum products that were purchased at a price higher than the cap will be barred from receiving EU technical assistance, brokering services, or financing or financial assistance (including insurance) for a 90-day period. These prohibitions are reflected in Art. 3n(7); see also Art. 3ea(2) of the Regulation.

Attestations. The European Commission included additional guidance on the functioning of the price cap mechanism in its [consolidated FAQs](#) (last updated on December 3).

In particular, this guidance clarifies that the price cap mechanism will rely on a recordkeeping and attestation process that allows each party in the supply chain of seaborne Russian crude oil to demonstrate or confirm that oil has been purchased at or below the price cap. This recordkeeping and attestation process is in addition to standard due diligence.

As in the US and the UK, the EU guidance distinguishes between three tiers of persons:

- **Tier 1** – These are actors who have direct access to price information in the ordinary course of business, such as commodities brokers, commodities traders, and other persons acting in their capacity as a seller or buyer of Russian oil. These persons should retain and share, as needed, documents that show that seaborne Russian oil was purchased at or below the price cap.
- **Tier 2** – These are actors who are sometimes able to request and receive price information from their customers in the ordinary course of business, such as financial institutions and customs brokers. When practicable, Tier 2 actors should request, retain and share, as needed, documents that show that seaborne Russian oil was purchased at or below the price cap. When not practicable to request and receive such information, Tier 2 actors should obtain and retain customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap.
- **Tier 3** – These are actors who do not have direct access to price information in the ordinary course of business, such as insurers, including P&I clubs, shipowners, ship management companies, and flagging registries. Tier 3 actors should obtain and retain customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap, for example as part of their annual insurance policy or ordinary business operations. This can be done through a sanctions exclusion clause or through the use of a price cap attestation.

The consolidated FAQs include a draft template attestation on page 232.

EU operators should hold the necessary attestations at the moment they conclude their contracts in relation to the transport of Russian oil to third countries (e.g., for banks, at the moment the loan is signed; for insurers, at the moment the insurance contract is concluded). When applicable, Tier 1 actors should adapt their commercial practices, including to allow Tier 2 and Tier 3 actors to collect attestations in a timely manner. EU operators are expected to retain relevant records for a minimum of five years from the date of transport.

EU law does not impose any reporting obligations on operators. However, operators should retain the necessary attestation(s) so that compliance can be verified by national competent authorities during controls or investigations.

UK Russian Crude Oil Price Cap Implementation

UK oil import ban. On December 5, 2022, the UK [announced](#) that it would prohibit the import of oil and oil products that are consigned from or originate in Russia. The UK also introduced a prohibition on providing financial services or funds in pursuance of or in connection with an arrangement whose object or effect is the import of oil or oil products that are consigned from or originate in Russia. Both of these measures have been implemented by The Russia (Sanctions) (EU Exit) Regulations 2019 at [Part 5, Chapter 4IA](#) at Sections 46Z4 and 46Z8 respectively.

UK price cap for purchases of Russian oil by third countries. The UK oil price cap is structured similarly to that of the United States and European Union—that is, as a ban with exceptions. The ban is contained within [The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 16\) Regulations 2022](#), which will come into force on December 5, 2022, for oil, and February 5, 2023, for oil products. They will be inserted into [The Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (the Regulations) at Part 5, Chapter 4IA.

Under this ban, the following will be prohibited:

1. Supplying or delivering seaborne Russian oil or oil products from Russia to a third country, or from one third country to another;
2. Providing financial services or funds in pursuance of or in connection with an arrangement whose object or effect is the supply or delivery of Russian oil or oil products; and
3. Providing brokering services in relation to the above financial service and funds restrictions.

The price cap will be implemented as a General License (GL/INT/2022/2469656), which will negate the effect of the above prohibitions in relation to oil that is purchased or sold below a particular price. The price cap relates to the price of the oil itself and not any ancillary costs. This poses an obvious circumvention risk, whereby a seller could artificially inflate the cost of ancillary services while keeping the oil price at or below the cap. In its [guidance note](#) on the price cap, the Office of Financial Sanctions Implementation (OFSI) has warned that entities should report to OFSI if they become aware of transactions for ancillary services where the prices are significantly different from market price.

The cap will apply from the point that the oil is received on a ship, up until it either passes through customs in a third country or is transformed into a different good.

Attestations. Parties involved in “the maritime supply chain” will be required to retain and share price information and/or attestations relating to oil prices. As in the US and the EU, the attestation requirements are divided into three tiers of persons:

- **Tier 1** – These are persons with regular, direct access to the price of cargo, and include importers, commodities brokers and traders. These persons must retain price information, for instance in the form of invoices, contracts or receipts, and share it with Tier 2 and Tier 3 persons on request.
- **Tier 2** – These are persons who directly interact with Tier 1 companies in relation to the supply or delivery of Russian oil, but do not have access to the price information. They must request and retain either that price information or a signed attestation from the Tier 1 counterparty, and share it with any counterparty who subsequently requests it.
- **Tier 3** – These are persons without direct access to price information, such as insurers and shipowners. They must ensure that their counterparties have committed not to breach the oil restrictions, either by obtaining a signed attestation or ensuring the attestation is included in contractual obligations. When transacting with a Tier 1 person, they must obtain confirmation that the person has complied with their reporting obligations (see below).

The OFSI guidance document, *UK Maritime Services Prohibition and Oil Price Cap Guidance*, contains a draft template attestation on page 22.

Reporting and recordkeeping obligations. A Tier 1 person is required to report to OFSI every time they use a General License issued by OFSI within 30 days of the transaction. Where there are multiple transactions, they may be consolidated into a single report so long as they are all reported within 30 days. Reports must be made to oilpricecap.ofsi@hmtreasury.gov.uk using the standard form, which will be published on OFSI’s website.

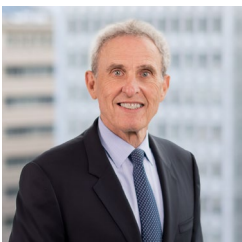
Tier 2 and Tier 3 persons who seek attestations from a Tier 1 entity must also ask and receive confirmation that the Tier 1 entity has complied with its reporting obligations. If that confirmation is not provided within 30 days, the Tier 2 or Tier 3 person must inform OFSI and withdraw their services immediately.

Tier 1 persons also have various recordkeeping obligations. They must retain any documentation relating to the relevant transaction for a period of four years following the end of the calendar year in which the transaction took place. For instance, for a transaction in February 2023, the person would have to retain all documentation until January 2028. The records must comply with various specific conditions set out in the OFSI guidance, but in general must demonstrate adherence to the General License.

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We will continue to provide relevant updates on these multi-jurisdictional measures.

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