ANAVE – Circular de Régimen Interior

Madrid, 5 de diciembre de 2022
Ref: Varios 63/2022/AB

Asunto: El G7 acuerda limitar a 60$ el precio del barril del petróleo ruso

Muy Srs. nuestros:

Los países del G7 acordaron el viernes limitar el precio del petróleo ruso fijando un tope de **60$ por barril**, mediante la modificación de la Decisión 2014/512/PESC. Esta medida **ha entrado en vigor en el día de hoy**.

El precio máximo se aplica desde el momento en que el petróleo es vendido por una entidad rusa para el transporte marítimo, hasta la primera venta en tierra, por lo que incluirá cualquier transferencia de las mercancías en cuestión entre buques, es decir, las transferencias de buque a buque.

Les adjuntamos en el **Anexo 1**, un documento de trabajo con **49 'preguntas frecuentes (FAQs)'** elaborado por los servicios de la Comisión para ayudar y orientar a las autoridades nacionales y operadores de la UE en la aplicación e interpretación del **límite del precio del petróleo**.

La modificación de la Decisión 2014/512 también introduce:

- Un período transitorio de 45 días para los buques 'que transporten petróleo crudo originario de Rusia, que haya sido comprado y cargado en el buque antes del 5 de diciembre de 2022 y descargado en el puerto de destino final antes del 19 de enero de 2023' (considerando 7). Les recordamos que la prohibición de transportar petróleo ruso a terceros países entra en vigor hoy, 5 de diciembre, para el petróleo crudo y el 5 de febrero de 2023 para los productos refinados del petróleo, salvo que se adquieran por debajo del límite máximo (ver FAQ 9 del Anexo 1).
- Aclaraciones sobre la repercusión en los buques con pabellón de un tercer país que no cumplan la normativa en lo que respecta a la pérdida de servicios, que se establece por un periodo de 90 días: en el caso de que se descubra que un buque con pabellón de un tercer país transporta petróleo ruso por encima del precio máximo y se determine que ha infringido las sanciones, ello implicará la pérdida de los servicios de la UE para el transporte de petróleo ruso (es decir, petróleo crudo o productos petrolíferos originarios de Rusia o exportados desde Rusia) por ese buque durante los 90 días siguientes a la fecha de descarga del cargamento adquirido por encima del precio máximo (ver FAQ 34 del Anexo 1).
- Una cláusula de revisión del funcionamiento del mecanismo de limitación de precios a partir de mediados de enero de 2023 y, posteriormente, cada 2 meses.

Asimismo, se ha actualizado el Reglamento 833/2014 sobre sanciones en este mismo sentido: modificaciones de las disposiciones principales y modificación del anexo que introduce el tope.

Cabe destacar que el 'considerando' 11 del Reglamento 2002/2367 sobre sanciones (que modifica el Reg. 833/2014) subraya la importancia de preservar la importancia estratégica del sector marítimo de la UE, y prevé que la Comisión adoptará urgentemente (a más tardar el 5 de febrero de 2023) medidas de apoyo para mantener y mejorar más la competitividad del transporte marítimo, protegiendo el interés del funcionamiento competitivo de los buques que enarbolan pabellón de los Estados miembros.

Adicionalmente, la Cámara Naviera Internacional (ICS) nos ha enviado esta mañana los siguientes documentos de orientaciones elaborados por EE.UU y Reino Unido sobre sus respectivas políticas y funcionamiento en la aplicación de esta nueva medida de precios máximos:

- 'OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil of Russian Federation Origin' (Departamento del Tesoro de EE.UU).
- 'UK Maritime Services Prohibition and Oil Price Cap Guidance'. (Departamento del Tesoro del Reino Unido).
- 'Price Cap on Russian Sea Borne Oil – Comparison Table (USA, EU, UK)', ver **Anexo 2**.

Muy atentamente,

Araiz Basurko
Subdirectora

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Guidance on oil price cap

This document is not a legal act. It is a working document drafted by the Commission services in order to help and give guidance to national authorities, EU operators and citizens for the implementation and interpretation of the provisions of Article 3n of Council Regulation (EU) No 833/2014 related to the oil price cap. National authorities and economic operators are expected in good faith to take into account this guidance based on the text, context and purpose of the Regulation, to achieve the uniform application of sanctions across the EU.

Section 1: Price cap setting

1. What is the price cap?

Last update: 3 December 2022

On 2 September 2022, building on the agreement of leaders at the Elmau G7 Summit in June, the G7 Finance Ministers agreed to finalise and implement a comprehensive prohibition for services that support the maritime transportation of seaborne Russian-origin crude oil and petroleum products globally, permitting the provision of such services only if the oil and petroleum products are purchased at or below a price cap to be established by an implementing coalition of countries, composed of G7 members and other participating countries ('Price Cap Coalition').

On 6 October 2022, in addition to the already existing prohibitions related to the provision of services for the maritime transport of Russian seaborne crude oil and petroleum products to third countries, the EU decided to further prohibit the maritime transport of such goods to third countries, which only becomes applicable if and when the Council adopts the necessary measures making the price cap applicable.

At the same time, the EU introduced an exemption from the prohibition to provide maritime transport and the prohibition of services for the maritime transport to third countries of Russian seaborne oil and petroleum products when such goods are purchased at or below the price cap ('**price cap**' or '**price cap exemption**'). This exemption is conditional upon the Council introducing the price cap into Annex XI to Decision 2014/512/CFSP.

Accordingly, the price cap establishes a framework for Russian seaborne crude oil and petroleum products to be exported to third countries under a capped price to achieve three objectives: (i) maintain a reliable supply of seaborne Russian crude oil and petroleum products to the global market; (ii) reduce upward pressure on energy prices; and (iii) reduce Russia's revenues and curtail its ability to wage a war of aggression against Ukraine, this war being the fundamental cause of the inflated global energy prices.

The price cap allows the trading, brokering, transport and other related services by EU operators to support critical energy supply to third countries.

2. How is the price cap set? How can operators know at which rate the price cap is fixed? Can the price cap be reviewed?

Last update: 3 December 2022

The price cap rate is set by a Price Setting Body of the Price Cap Coalition. This Price Cap Coalition conducts a technical exercise and reaches consensus on the appropriate level at which to fix the price cap rate. This rate is a price per barrel.
After an initial price cap has been set, the price may be amended in the future to reflect technical changes and agreements of the Price Cap Coalition.

The price cap rate is approved by a unanimous decision of the Council. Such decision will introduce the price cap in Annex XI to Decision 2014/512/CFSP. In accordance with this Decision, the price cap is inserted into EU law by an amendment of Annex XXVIII to Regulation (EU) 833/2014 via a Commission implementing act. Any subsequent changes would require the same procedure i.e. a Council Decision and a Commission implementing act.

This information is published in the Official Journal of the EU.

3. **In what currency is the price cap set? Which conversion rate should be used if the oil was purchased in another currency**?

Last update: 3 December 2022

Oil purchases from Russia may occur in U.S. dollars (USD) or in other currencies.

The price cap rate is specified in Annex XXVIII to Regulation (EU) No 833/2014 in USD only.

The reference price per barrel should be the one set in the purchase contract and effectively paid. If it is denominated in any currency other than the US dollar, for the purpose of conversion and application of the price cap, the exchange rate to apply shall be the average, over the thirty calendar days prior to the date the price is agreed upon, of the relevant daily exchange rate published by the U.S. Federal Reserve H.10. The daily exchange rates are available at the following website: https://www.federalreserve.gov/releases/h10/default.htm. The average shall be calculated as a simple average, i.e. as the ratio of the sum of the published exchange rates and the number of actual observations over the thirty calendar days prior to the date the price is agreed upon.

If the relevant exchange rate is not available from the above mentioned source of the U.S. Federal Reserve, the relevant exchange rate between the USD and the currency of purchase shall be calculated as the average over the prior thirty calendar days of the triangular conversion of the daily exchange rate between the EUR and the USD and of the daily exchange rate between the EUR and the currency of purchase, as published by the European Central Bank (ECB) at the following website: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html).

If the relevant exchange rate between the EUR and the currency of purchase is not available from the ECB, the average exchange rate between the USD and the currency of purchase over the prior thirty calendar days shall be calculated as the average over the prior thirty days of the triangular conversion of the daily exchange rate between the Special Drawing Rights (SDR) and the USD and of the exchange rate between the SDR and the currency of purchase published by the International Monetary Fund and available at the following website: https://www.imf.org/external/np/fin/data/param_rms_mth.aspx. For example, in the case the currency of purchase is the Russian ruble (RUB), the conversion rate shall be calculated as the ratio of SDR/RUB and SDR/USD.

If the relevant exchange rate is not available from any of the sources indicated above, another standard source of exchange rate data may be used (e.g. data reporting services providers).

While many contracts currently rely on the average oil price over a period of time, existing contracts may need to be renegotiated to reflect a fixed price cap rate. These changes may be necessary so that buyers can ensure they are purchasing at or below the cap when they calculate the price based on the relevant exchange rate.

National competent authorities will ascertain that EU operators have taken all the necessary steps, in good faith, to ensure oil is purchased at or below the price cap.

4. Does the price cap rate include transport costs?
Last update: 3 December 2022

Shipping, freight, customs, and insurance costs are not included in the price cap and must be invoiced separately and at commercially reasonable rates. While shipping and insurance are covered services, these costs are distinct from the price cap on Russian oil.

Some market participants may need to adjust their invoicing models to show the price of the oil until the port of loading and the price for transportation and other services separately. This could require participants, such as sellers or service providers, to put new processes in place to itemize and document these costs, as well as ensure that shipping and other service charges were not used as a means of subverting the price cap. See FAQ 36.

5. There is a prohibition to transport Russian seaborne oil and a prohibition to provide related services. How can EU operators still offer such services?
Last update: 3 December 2022

As stated in the FAQ 1 above, the price cap on Russian seaborne oil is an exemption from these sanctioned activities. The services in question are only allowed to transport to third countries and only if the Russian seaborne oil was purchased at or below the price cap.

6. When does the price cap start applying? When does it stop applying?
Last update: 3 December 2022

The price cap will apply from the receipt of cargo on a vessel of the Russian-origin crude oil or petroleum products (loading). This means that any intermediary trade conducted while the oil is at sea must occur at or below the price cap. The same applies also in cases of oil ship-to-ship transfers. The price cap will no longer apply after the crude oil or petroleum products have been released for free circulation in a jurisdiction outside Russia and are consigned to the landed purchaser.

If the oil has been customs cleared and then becomes seaborne again without being substantially transformed into a different good in line with non-preferential rules of origin. (i.e. without being

refined), then the price cap will still apply. A substantial transformation is a transformation into a good such that the product then comes under a different HS code.

7. How will compliance with the price cap be ascertained in practice?
Last update: 3 December 2022

The application of the price cap exemption relies on an attestation process that enables operators along the supply chain of seaborne Russian oil to demonstrate that it has been purchased at or below the price cap.

EU operators which trade, transport or provide relevant services for the shipment of this oil can do so by securing certain documentation or attestation from their counterparties proving the Russian oil was bought at or below the relevant price, as explained further below in Section 7 'Attestations'.

8. What oil is covered by the price cap? Do these measures apply to non-Russian oil cargo which is mixed with Russian oil?
Last update: 3 December 2022

These measures apply to Russian crude oil falling under CN code 2709 00 as of 5 December 2022 and Russian petroleum products falling under CN code 2710 as of 5 February 2023. In both cases, this shall happen only after adoption of the Council Decision establishing the price cap.

Oil and petroleum products which originate in a third country and are only being loaded in, departing from or transiting through Russia, provided that both the origin and the owner of those goods are non-Russian, are exempt from the price cap.

In order to determine if the product originates in Russia. For this purpose, the non-preferential rules of origin of the EU apply. EU operators should exercise appropriate due diligence in assessing the origin of the oil and should rely on documentation at their disposal to determine the origin of the oil, which may include certificates of origin.

Russian oil transported together with oil of other origin in mixed fashion is subject to the price cap. This means that an attestation will need to be provided for the proportion of Russian oil (see section below on 'Attestations'). For restrictions applicable to oil transported in mixed fashion see also FAQ 2 on Oil Imports.

For example, in the case of the Caspian Pipeline Consortium pipeline which transports Kazakh oil through Russia, the mixed oil is Kazakhstan origin oil, as proven by a certificate of origin or other documentation, with some unavoidable Russian oil residue for technical reasons. The transport of this oil would not be subject to the price cap.

Crude oil or petroleum products of non-Russian origin that contain a *de minimis* amount of Russian oil left over from a container or tank (i.e. unpumpable quantity of substance which

cannot be removed from a container without causing damage to the container) will not be considered Russian origin oil and thus will not be subject to the price cap.

Section 2: Entry into force and wind-downs

9. Can Russian seaborne oil still be transported to third countries until 5 December 2022?

Last update: 3 December 2022

Yes. The transport ban for Russian seaborne oil to third countries comes into force on 5 December 2022 for crude oil and 5 February 2023 for petroleum products, unless below the price cap.

10. Can maritime related services be provided for the transport of Russian seaborne oil until 5 December 2022?

Last update: 3 December 2022

Since 3 June 2022, there is a prohibition to provide technical assistance, brokering services or financing or financial assistance for the transport to third countries of Russian seaborne oil. However, there is a wind-down period for the execution of services contracts until 5 December 2022 (for crude oil) and 5 February 2023 (for petroleum products).

At the end of these wind-downs, the prohibition to provide these services applies, subject to the 45-day wind-down period for Russian oil transported at sea on 5 December 2022 (see FAQ 12), unless the Russian seaborne oil was purchased at or below the price cap.

11. When does the price cap enter into force?

Last update: 3 December 2022

The price cap enters into force as of 5 December 2022 for crude oil and as of 5 February 2023 for petroleum products. These measures apply to Russian crude oil falling under CN code 2709 00 and Russian petroleum products falling under CN code 2710. A 45-day wind down period applies for Russian oil at sea on 5 December 2022 (see Q13 below). In case of proven *force majeure* hindering the unloading of Russian crude oil or petroleum goods at the final port of destination prior to 19 January 2023 (eg, storm, port or straits blockade etc.), the wind-down period can be extended beyond 45 days until the hindering exceptional circumstance has ceased to exist.

12. Russian oil is being transported at sea on 5 December 2022. Does it need to comply with the price cap?

Last update: 3 December 2022

No. There is a 45-day wind-down period for seaborne Russian oil purchased above the price cap, provided it is loaded onto a vessel at the port of loading prior to 5 December 2022 and unloaded at the final port of destination prior to 19 January 2023. In case of proven *force majeure* hindering the unloading at the final port of destination prior to 19 January 2023 (eg, storm, port or straits blockade etc.), wind-down period can be extended beyond 45 days until the hindering circumstance has ceased to exist.

13. After the initial price cap was fixed, the price cap changes in the future. Is there a wind-down period?

Last update: 3 December 2022

After an initial price cap has been set, the price may be amended by the Price Cap Coalition. When this occurs and the price in Annex XXVIII is changed, there is wind-down period of ninety (90) days for the transport and related services to the transport of Russian crude oil (and petroleum products), where the conditions of Article 3n(5) are fulfilled.

14. Do contracts referred to in Art. 3n(2)(a) concluded before 4 June 2022 concern services contracts such as an insurance contract or the Russian seaborne sale or purchase contract?

Last update: 3 December 2022

This provision refers to services contracts such as an insurance contract concluded before 4 June 2022.

15. Does Art. 3n(3) mean that the insurance cover must cease by 5 December 2022, for it to be lawful to pay claims that have arisen between 4 June 2022 and 5 December 2022?

Last update: 3 December 2022

The prohibition to provide insurance for the transport of Russian seaborne oil applies from 5 December 2022. As of 5 December, insurance can be provided, if the Russian seaborne oil was purchased at or below the price cap.

(i) In case the insurance ceases by 5 December, claims arising between 4 June and 5 December can be lawfully paid out even after 5 December 2022.

(ii) In case the insurance continues after 5 December 2022 in compliance with the price cap, there is no limitation as to when the claims need to be lawfully paid out.

16. If the price cap is amended, on-going contracts, including insurance, at the previous price cap rate benefit from a 90 days wind-down period per Article 3n(5). Is it necessary to settle claims arising from such contracts within those 90 days?

Last update: 3 December 2022

Article 3n(5) provides that the price cap will not apply for a period of 90 days to the transport of and related services to the transport of seaborne oil originating in Russia or which has been exported from Russia, subject to specific conditions. It does not set a deadline for the settlement of claims arising during the 90-day period.

Section 3: Interaction with other provisions

17. Does the price cap affect the import ban into the Union?

Last update: 3 December 2022

No. Article 3n and the price cap exemption concern the trade and transport of Russian crude oil and petroleum products to and between third countries only.

18. Are derogations under Article 3m affected by the price cap?

Last update: 3 December 2022

The price cap does not affect in any way the exceptions and derogations contained in Article 3m, including allowing certain Member States to continue importing crude oil and petroleum products from Russia due to their specific situation or to import seaborne crude oil from Russia if the supply of crude oil by pipeline from Russia is interrupted for reasons beyond their control.

Section 4: Scope of the measure

19. Is trading and brokering included?

Last update: 3 December 2022

The trading and brokering of Russian oil are allowed if the oil is purchased at or below the price cap.

Brokering is defined in Article 1(d) of Council Regulation (EU) 833/2014 as meaning (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or (ii) 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.

Article 3n paragraph 1 prohibits the provision of brokering services related to Russian oil and its transport, including through ship-to-ship transfers, to third countries. Accordingly, this prohibition should be understood as applying widely to all related brokering services such as commodities brokering, insurance brokering, customs brokering, ship brokering.

20. What is the scope of the maritime related services ban?

Last update: 3 December 2022

Article 3n, paragraph 1, provides that it is prohibited to provide, directly or indirectly, technical assistance, brokering services or financing or financial assistance, related to the maritime transport of Russian seaborne oil.

21. Is classification included?
Last update: 3 December 2022

No. Service providing assurance that a ship complies with legal requirements and standards established by the classification society during design and construction, and maintained during operation, is not included.

22. Does insurance brokering fall under "brokering services" in Art. 3n(1)?
Last update: 3 December 2022

Yes. According to Article 1(d), brokering services means: (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or (ii) 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.

23. Are flagging and registration services included?
Last update: 3 December 2022

Yes. Flagging and registration services are prohibited for a vessel involved in the transportation of Russian oil, except if it adheres to the price cap.

24. Is the processing, clearing or sending of payments by intermediary banks included?
Last update: 3 December 2022

The approach as clarified by the Commission's guidance previously applies: in Case C-72/15 (Rosneft), the Court of Justice clarified that the notion of 'financial assistance' in Article 4 does not include the processing of a payment, as such, by a bank or other financial institution. The term encompasses measures which require the financial institution concerned to commit its own resources. However, the Court of Justice also clarified that the processing of payments linked to the sale, supply, transfer or export of prohibited items, is prohibited. The issuance of letters of guarantees/credit involves the commitment of the issuer's own resources, and as such constitutes financial assistance and is prohibited when linked to the underlying commercial transaction subject to a ban under Article 2a.

This is without prejudice to the exceptions and derogations contained in Article 3m, including shipments which are imported by Bulgaria, Croatia or landlocked Member States.

25. Is bunkering of Russian oil included?
Last update: 3 December 2022

No. The maritime services ban does not extend to bunkering (service of supplying fuel for use by ships).

26. Is chartering prohibited?
Last update: 3 December 2022

Yes, it is prohibited for any EU operator to charter, including sub-charter, a vessel for the transport of Russian oil, unless it complies with the price cap.

Section 5: Maritime transport

27. Which EU vessels should comply with this measure?
Last update: 3 December 2022

The prohibition to transport Russian seaborne oil applies to all EU vessels, i.e. EU flagged vessels, and also vessels that are owned, chartered and/or operated by EU companies or nationals[1]. This would also cover agents acting on their behalf.
Accordingly, these same vessels are allowed to transport Russian seaborne oil provided it is carried at or below the price cap.

28. Are ship-to-ship transfers prohibited above the price cap?
Last update: 3 December 2022

Yes, ship-to-ship transfers for the transport of prohibited Russian oil are explicitly prohibited in Article 3n(4), if purchased above the price cap. No EU operator should conduct ship-to-ship transfers for the transport of Russian oil, if purchased above the price cap. The inclusion of this explicit prohibition aims to prohibit a practice which would otherwise result in the circumvention of the general transport prohibition set out in the same paragraph.

29. What are the obligations of EU port authorities? And EU customs authorities?
Last update: 3 December 2022

The price cap only applies to the transport of Russian seaborne oil to third countries.

The import ban of Russian seaborne oil into the Union applies from 5 December 2022 for crude oil and from 5 February 2023 for petroleum products in accordance with Article 3m. Accordingly, EU port authorities and EU customs authorities should stop such shipments from entering EU territory. This is without prejudice to the exceptions and derogations contained in Article 3m, including shipments which are imported by Bulgaria, Croatia or landlocked Member States.

[1] Article 13, paragraphs b, c and d of Council Regulation 833/2014.

Past the abovementioned deadlines, authorisations/derogations for the import into the Union of oil can no longer be granted concerning Russian seaborne oil. This is because such derogations were possible "unless prohibited under Article 3m or 3n", for instance in Articles 3ea(5)(a) or 5aa(3)(aa) of Council Regulation 833/2014.

30. Can a ship transport Russian oil if the contract relating to the transport was signed before the entry into force of the price cap measure?

Last update: 3 December 2022

The price cap enters into force on 5 December 2022 for crude oil and on 5 February 2023 for petroleum products. This means that from those dates, EU operators will not be allowed to transport Russian oil if such oil was purchased above the price cap. However, there is a 45-day wind-down period for seaborne Russian oil purchased above the price cap, provided it is loaded onto a vessel at the port of loading prior to 5 December 2022 and unloaded at the final port of destination prior to 19 January 2023. In case of proven *force majeure* hindering the unloading of Russian crude oil or petroleum goods at the final port of destination prior to 19 January 2023 (eg, storm, port or straits blockade etc.), the wind-down period can be extended beyond 45 days until the hindering exceptional circumstance has ceased to exist.

If the price cap changes (after 5 December 2022 for crude and after 5 February 2023 for petroleum products), transport will still be allowed for 90 days if the contract was signed before the new price was adopted, so long as the price was in line with the price cap applicable at the time of the conclusion of the contract, as set out in Article 3n paragraph 5. If the price cap change is an increase in the price, the transport of oil within the new price cap is possible.

31. Can a vessel access EU ports if it carries oil after 5 December 2022?

Last update: 3 December 2022

No. The import ban of Russian seaborne oil into the Union applies from 5 December 2022 for crude oil and 5 February 2023 for petroleum products in accordance with Article 3m.

Past these deadlines, access to EU ports is no longer possible since authorisations/derogations for the import into the Union of Russian oil can no longer be granted concerning Russian seaborne oil. This is without prejudice to the exceptions and derogations contained in Article 3m, including shipments which are imported by Bulgaria, Croatia or landlocked Member States. This is because such derogations were possible "unless prohibited under Article 3m or 3n" in Article 3ea(5)(a) of Council Regulation 833/2014.

Section 6: Article 3n, paragraph 7

32. Can an EU operator provide services to a third country flagged vessel if it transported Russian oil above the price cap? How can an EU operator know whether a vessel has transported Russian oil above the price cap?

Last update: 3 December 2022

The prohibition to provide services related to the transport of Russian crude oil or petroleum products by a third country flagged vessel applies in relation to third country flagged vessels which in the past transported such goods purchased above the price cap, provided the operator responsible for that transport knew or had reasonable cause to suspect that this was the case.
EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure (eg, the tier they are in) to ensure compliance with this provision. In cases where an EU operator without direct access to price information (eg, tier 2 or 3) reasonably relies on an attestation showing the Russian good was transported at or below the price cap, after performing appropriate due diligence, and such an attestation was falsified or provided by illegitimate actors, the EU operator would not be considered in breach of this provision provided they acted in good faith. Furthermore, the operator responsible for that transport will be deemed to not know or to have had no reasonable cause to suspect that the oil was transported above the price cap based on the due diligence requirements applicable to the tier they are in.

It should be noted that, according to Article 10 of Regulation No 833/2014, actors will not face liability of any kind "if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation."

33. What are the notification obligations of Member States under this provision?
Last update: 3 December 2022

Member States and the Commission should inform each other of detected instances of breach or, circumvention of this provision. This means they should inform each other in cases when there are substantiated instances of breaches or circumvention of such measures. Mere suspicions or vague allegations without substantiation are not subject to the notification requirement.
Any information provided or received in accordance should be used for the purposes for which it was provided or received, including ensuring the effectiveness of the measure.

34. If a third country flagged vessel runs afoul of Article 3n paragraph 7, would the resulting prohibition be (1) loss of EU services for transporting Russian oil by that vessel, or (2) loss of EU services for transporting any oil by that vessel?
Last update: 3 December 2022

The resulting prohibition would entail the loss of EU services for transporting Russian oil (i.e. crude oil or petroleum products which originate in Russia or are exported from Russia) by that third country flagged vessel for a period of 90 days following the date of unloading of the cargo purchased above the price cap.

Violations of other provisions of Regulation No 833/2014 by EU vessels, such as EU flagged vessels, would be subject to consequences that follow under each Member State's national legislation, as in cases of other sanctions violations.

Section 7: Attestations and recordkeeping

35. How does the recordkeeping and attestation process work?

Last update: 3 December 2022

The price exception will rely on a recordkeeping and attestation process that allows each party in the supply chain of seaborne Russian 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.

The recordkeeping and attestation process is intended to provide assurances to EU operators that followed the appropriate due diligence to reasonably rely on such attestations. In cases when an EU operator without direct access to price information reasonably relies on an attestation, after performing appropriate due diligence, and such an attestation was falsified or provided by illegitimate actors, the EU operator would not be considered in breach of the price cap provided it has acted in good faith.

Tier 1	Actors who have direct access to price information in the ordinary course of business.	Commodities brokers, commodities traders, and other persons acting in their capacity as seller or buyer of Russian oil.	Tier 1 actors should retain and share, as needed, documents that show that seaborne Russian oil was purchased at or below the price cap.
Tier 2	Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business.	Financial institutions, custom brokers	When practicable, Tier 2 actors 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	Actors who do not have direct access to price information in the ordinary course of business.	Insurers, including P&I clubs, shipowners, ship management companies, 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.

36. What are the obligations for traders, commodities brokers and refiners? What documentary evidence do they need?

Last update: 3 December 2022

Traders, commodities brokers and refiners are Tier 1 actors. EU operators who have direct access to price information in the ordinary course of business, such as commodities brokers and refiners should retain and share, as needed, documents that show that seaborne Russian oil was purchased at or below the price cap. Such documentation may include invoices, contracts, or receipts/proof of accounts payable.

Refiners or other purchasers in third countries that have not prohibited the import of crude oil or petroleum products of Russian origin should be prepared to provide documentation showing that the oil was purchased at or below the price cap to EU maritime service providers in order to receive these services.

Where a Tier 1 actor purchases Russian oil by contracting a "Cost, Insurance, Freight" agreement, it should require a breakdown of the costs in order to identify the different expenses. It should also keep record of the charterparty agreement.

37. What are the obligations for financial institutions? What documentary evidence do they need?

Last update: 3 December 2022

Financial institutions are Tier 2 actors. EU operators who are sometimes able to request and receive price information from their customers in the ordinary course of business, such as financial institutions should, when practicable, 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, they should request customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap. The documentary evidence is thus invoices, contracts, receipts/ proof of accounts payable or a price cap attestation.

This is without prejudice to the exceptions and derogations contained in Article 3m, including shipments which are imported by Bulgaria, Croatia or landlocked Member States.

38. What are the obligations of shipowners to ensure that the oil was carried in accordance with the price cap?

Last update: 3 December 2022

Shipowners are Tier 3 actors. Accordingly, they do not have direct access to price information in the ordinary course of business.

Shipowners should obtain from their customer an attestation in which the customer confirms the Russian oil cargo transported or to be transported has been purchased at or below the price cap. This can be a separate document or even annexed to the charterparty or bill of lading.

Shipowners may also adjust the sanctions clauses to warrant that no trade will be carried out above the price cap and ensure that this obligation is applied effectively throughout the charterparty chain. In this case, charterparties signed prior to the entry into force of the price cap should be updated. For this purpose, Council Regulation 833/2014, as amended in view of implementing the price cap, can be invoked as "unforeseen change of circumstances".

Shipowners are required to do the necessary due diligence such that it would be reasonable to rely on the attestation they have been provided by their customer. This attestation can be shared with the shipowner's other counterparties, such as insurers.

Shipowners should keep records of this attestation for at least five (5) years so that they may demonstrate their compliance if it is later ascertained that the oil onboard was traded above the price cap.

39. Will shipowners be considered to run afoul of the price cap if cargo is traded above the price cap during the voyage?

Last update: 3 December 2022

No. Shipowners are not required to obtain further attestation from subsequent buyers of the cargo during the transit.

40. What are the obligations for insurers and protection and indemnity (P&I) clubs?

Last update: 3 December 2022

Insurers are Tier 3 actors. Accordingly, they do not regularly have direct access to price information in the ordinary course of business.

Insurers should obtain and retain customer attestations in which the customer commits to not purchase seaborne Russian oil above the price cap. They may request attestations from customers that cover the entire period a policy is in place, for example for the entire length of an annual policy, rather than request separate attestations for each shipment. The documentary evidence is thus attestations tied to an annual policy.

Insurers may also adjust the sanctions clauses in their policies during their renewal or by updates to current insurance policy to warrant that no trade will be carried out above the price cap.

41. In the documentary evidence/attestations, does the exact purchase price need to be disclosed?

Last update: 3 December 2022

The documentation held by Tier 1 Actors should contain price information, and where applicable by Tier 2 Actors. This is not the case for Tier 3 Actors.

42. At what point in time should the operators collect the attestation?
Last update: 3 December 2022

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 i.e. for banks, at the moment the loan is signed, for insurers at the moment the insurance contract is concluded etc. 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.

43. How long should an operator keep the documentary evidence?
Last update: 3 December 2022

EU operators are expected to retain relevant records for a minimum of five (5) years from the date of transport.

44. Are EU operators subject to reporting obligations?
Last update: 3 December 2022

No, EU legislation does not require operators to report. However, operators should retain the necessary attestation(s) as explained above so that compliance can be verified by national competent authorities during controls or investigations.

Section 8: Enforcement

45. How will the price cap be enforced?
Last update: 3 December 2022

Enforcing sanctions provisions is first and foremost a matter for the national enforcement authorities. Please also refer to FAQ 35.

For specific enforcement questions, EU operators should contact the relevant national competent authority. You can find a list of the national competent authorities for each EU Member State here: https://www.sanctionsmap.eu/#/main/authorities

46. How will circumvention of the price cap be assessed?
Last update: 3 December 2022

It falls within the competencies of the national competent authority of the EU Member State in question to decide on possible cases of circumventions within their jurisdiction. Article 12 of Council Regulation (EU) No 833/2014 provides that it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the Regulation.

When establishing circumvention, national competent authorities should take into account if the EU operator took the appropriate steps to ensure compliance with the price cap, in line with the guidance provided in questions above, in view of the different obligations falling upon different operators and the fact that not every service provider may have access to all information about a transaction involving seaborne Russian oil.

Any tips or information regarding possible circumvention should be actively reported to national competent authorities. In line with this national enforcement competence, the Commission will liaise with the national competent authorities of the Member States if it receives information regarding possible circumvention. Finally, the Commission has recently launched an EU whistle-blower tool enabling the anonymous reporting of possible sanctions violations, including circumvention[2].

47. What are some possible red flags for price cap circumvention?
Last update: 3 December 2022

EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure.

There is no one-size-fits-all model of due diligence. It may depend – and be calibrated accordingly – on the business specificities and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk assessment. Such sanctions compliance programmes can assist in detecting red flag transactions that can be indicative of a circumvention pattern. Other best practices include establishing automatic identification system (AIS) best practices and contractual requirements, monitoring ships throughout their entire transactions lifecycle, adopting Know Your Customer (KYC) and counterparty practices, exercising supply chain due diligence, incorporating best practices into contractual language and information sharing within the industry.

The Commission expects equally to be working with the other members of the Price Cap Coalition to share information with regard to the potential breaches of the prohibitions related to the maritime services ban and maritime transport ban, or any other information relevant to circumvention or other similar practices.

[2] https://eusanctions.integrityline.com/frontpage

Section 9: Exempted projects

48. What projects are exempted from the maritime services and transportation ban?

Last update: 3 December 2022

Specific projects which are essential for the energy security of certain third countries may be exempted from the price cap. The current list of exempted projects referred to in Article 3n(6)(c) are contained in Annex XXIX. It includes:

The transport by vessel to Japan, the technical assistance, brokering services, financing or financial assistance related to such transport, of crude oil falling under CN 2709 00 commingled with condensate, originating in the Sakhalin-2 (Сахалин-2) Project, located in Russia. This exemption applies on 5 December 2022 and expires 5 June 2023.

49. May other projects be exempted from the maritime services and transportation ban in the future?

Last update: 3 December 2022

Where certain objective criteria are fulfilled, the G7 and coalition members may agree to exempt other energy projects from the maritime services and transportation ban. Exempting additional projects within the EU sanctions regime requires unanimous agreement from the Council on a Council Decision, before the Commission may use its implementing powers to amend Annex XXIX accordingly.

Attestation Model

EU service providers are not required to use a particular form of attestation, the below attestation model is non-binding. For certain service providers, such as insurers, an attestation may take the form of a sanction exclusion clause within an annual policy, or a clause stating a party will not have cover if they transport oil purchased above the price cap.

［Date, Month, Year］

[Party to the contract/service] confirms that for [the service being provided], [party to the contract/service] is in compliance with the Russian price cap framework and any other restrictions on seaborne Russian oil applicable to [party to the contract/service]. [Party to the contract/service] attests that:

•[party to the contract/service] has received and retained price information demonstrating that the seaborne Russian oil was purchased at or below the cap; or

• where not practicable to request and receive such information, [party to the contract/service] has obtained an attestation that the purchase of seaborne Russian oil is purchased at or below the cap; or

• [party to the contract/service] has received a signed attestation that the purchase of seaborne Russian oil fall under a derogation.

[Signature of the Customer]

Annex D to MLC(22)32 & IC(22)09 05/12/2022

Price Cap on Russian Sea Borne Oil – Comparison Table

	USA	EU	UK
	Revised Guidance Issued 22 November 2022	Revised Guidance Issued 3 December 2022	Guidance Issued 14 November 2022
Legislation	**Determination pursuant to Executive Order 14071 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude oil of Russian Federation Origin").** The effect of the determination is to authorise U.S. persons to provide certain services as they relate to the maritime transport of Russian oil, as long as that Russian oil is purchased at or below a certain price ('the price cap') NB: this relates to the transport to third party countries only as pursuant to E.O. 14066, the import into the United States of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products of Russian Federation origin is prohibited; and U.S. persons, wherever located, are prohibited from new investment in the energy sector in the Russian Federation, among other things.	**8th Package of EU sanctions against Russia – by way of amendments to Regulation 833/2014. Introduced through Decision (CFSP) 2022/1909 which:** Sets out an exemption from "the prohibition to provide technical assistance, brokering services or financing or financial assistance, related to the maritime transport to third countries of crude oil or petroleum products which originate in or are exported from Russia, purchased at or below a pre-established price cap agreed by the Price Cap Coalition" NB: The exemption is conditional on the introduction of a price cap and the exemption relates to the transport to their party countries only.	**The Russia (Sanctions) (EU Exit) (Amendment) (No. 16) Regulations 2022 Chapter 41A of Part 5. Gives effect to:** • A ban on the maritime transportation of Russian oil and Russian oil products. • There is also a ban on associated services (such as finance, brokering and insurance services) which facilitate the maritime transportation of Russian oil and Russian oil products with effect from the same dates. However, in the case of transport to third party countries there is an exception if the oil was sold at or below the price cap for Russian Seaborne oil or oil products.
Product	Crude oil means articles defined at Harmonized Tariff Schedule of the United States ("**HTSUS" subheading 2709.00**) For the purposes of assessing whether crude oil is of Russian origin, U.S persons may reasonably rely on a certificate of origin but should exercise caution if they have reason	• Crude oil falling under **CN Code 2709 00** • Petroleum products falling under **CN code 2710**	• **HS 2709** Petroleum oils and oils obtained from bituminous minerals, crude. Includes Clean Condensate • **HS 2710** Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included,

	to believe such certificate has been falsified or is otherwise erroneous. Blending of crude oil alone will not be considered to be a substantial transformation. This means that an attestation will need to be provided for the proportion of Russian oil.	Russian oil transported together with oil of other origin in a mixed fashion is subject to the price cap. This means that an attestation will need to be provided for the proportion of Russian oil.	containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations: waste oils. Include HSFO, VGO, Kerosene. Non-Russian oil or oil products which are blended with Russian oil or oil products will be subject to the prohibitions and price cap. – Blending alone does not count as a substantial transformation. This means that an attestation will need to be provided for the proportion of Russian oil.
Application	Applies to "Covered Services" according to the following descriptions: • Trading /Commodities brokering • Financing • Shipping (Owning or operating a ship for the purpose of carrying or delivering cargo and/or freight transportation; chartering or sub chartering ships to deliver cargo or transport freight; brokering between shipowners and charterers; and serving as a shipping vessel agent • Insurance – The provision of insurance, reinsurance, or protection and indemnity ("P&I"); satisfying claims against losses that may occur as a result of property damage or liability. • Flagging - Registering or maintaining the registration of a ship (does not include de-flagging vessels transporting oil above the price cap. • Customs brokering	Applies to direct or indirect technical assistance, brokering services or financing or financial assistance related to the maritime transport of Russian oil (unless it complies with the price cap). Applies to: • Trading and brokering • Insurance • Flagging and registration services • Financial services • Chartering • All EU flagged vessels (plus those owned, chartered or operated by EU companies or nationals – and would also cover agents acting on their behalf)	Applies to an "involved person" which means a person who is involved in either: (a) The supply or delivery of oil or oil products: or (b) The provision of financial services, funds or brokering services relating to the supply or delivery of oil and oil products as defined. Therefore a shipowner and/or insurance providers will fall within this definition.

Services <u>not</u> covered by the Price Cap	• Medical evacuation or other emergency services for crew members: • Health, travel or liability insurance for crew members. • Classification, inspection, bunkering and pilotage.	• Classification • Bunkering services • Pilot services for maritime safety	The Guidance is silent on this point.
Scope	US Person means any US Citizen, lawful permanent resident, entity organised under the laws of the US or any jurisdiction with the US (including foreign branches) or any person in the US	EU Persons and legal entities For shipping this means EU flagged vessels, and also vessels that are owned, chartered and/or operated by EU companies or nationals . This would also cover agents acting on their behalf.	Persons in the UK (territory and territorial sea of the UK) and UK persons globally. All UK nationals and legal entities established under UK law, including their branches must comply.
In effect from:	Russian oil from <u>5 December 2022:</u> Russian oil products from <u>5 February 2023.</u> Assuming the price cap is agreed.	Russian oil from <u>5 December 2022</u> Russian oil products from <u>5 February 2023.</u> Assuming the price cap is agreed	Russian oil from <u>5 December 2022:</u> Russian oil products from <u>5 February 2023.</u> Assuming the price cap is agreed.
Grace period/wind down period	U.S. service providers can provide services in respect of Russian Crude purchased at any price, provided that the crude oil is loaded on board the vessel at the port of loading before 12:01 am eastern standard time, on 5 December 2022 and unloaded at the port of discharge (in the third party country) before 12:01 am eastern standard time 19 January 2023	45 days for Russian oil at sea on 5 December 2022 – i.e., loaded before 5 December 2022, and will be unloaded at the final port of destination prior to 19 January 2023. In case of proven force majeure hindering the unloading of Russian crude oil or petroleum goods at the final port of destination prior to 19 January 2023 (e.g. storm, port or straits blockade etc.), the wind-down period can be extended beyond 45 days until the hindering exceptional circumstance has ceased to exist.	Not an offence if the oil was sold above the price cap if loaded onto a ship before 12.01, on 5 December 2022 and will be delivered and clear customs in a third party before 12:01 on 19 January 2023

	USA	EU	UK
Time period of Application	The price cap applies from when the crude oil is sold by a Russian entity for maritime transport, through the first landed sale (through customs clearance) in a jurisdiction other than the Russian Federation. The price cap does not apply to any further on-shore sale, but if the oil is loaded on board a vessel without being substantially transformed (i.e., transformed into a new product) the price cap still applies.	The price cap applies from the receipt of cargo on a vessel of the Russian-origin crude oil or petroleum products (loading). This means that any intermediary trade conducted while the oil is at sea must occur at or below the price cap. The same applies also in cases of oil ship-to-ship transfers. The price cap will no longer apply after the crude oil or petroleum products have been released for free circulation in a jurisdiction outside Russia and are consigned to the landed purchaser. But if the oil has been custom cleared and then becomes seaborne again, without being substantially transformed (in line with non-preferential rules of origin) so the product comes under a different HS code - the price cap still applies.	The price cap applies from receipt of the cargo on board the ship, up the point where it is delivered and passes through customs controls in a third country, or is substantially transformed into a different good in line with non-preferential Rules of Origin (product then comes under a different HS code). No reference in the UK guidance to loading back on board a vessel before it is substantially transformed.
Operation of the Price Cap	U.S. persons providing covered services must ensure that refiners or other purchaser in third countries that have not prohibited the import of Russian oil provide documentation showing that the Russian oil was purchased at or below the relevant price cap.	EU Operators which trade, transport or provide relevant services for the shipment of Russian oil can do so by securing certain documentation or attestation from their counterparties proving the oil was bought at or below the price cap.	By way of General Licence issued by OFSI. A licence is a written permission from OFSI allowing an act that would otherwise breach prohibitions imposed by sanctions. (General licence not published as at 28/11/22)
STS operations	STS operations are not expressly prohibited but in the 14 May 2020 Global Advisory STS transfers are listed as an “indicator” or “red flag”.	Ship-to-ship transfers for the transport of prohibited Russian oil are explicitly prohibited, **if purchased above the price cap.** No EU operator should conduct ship-to-ship transfers for the transport of Russian oil, **if purchased above the price cap.**	STS operations are not expressly prohibited but the offence regarding the supply or delivery of Russian Oil by ship **includes any transfer of the goods concerned between ships of which those goods are being supplied or delivered, unless the oil has been purchased at or below the price cap.**

	USA	EU	UK
Are marine transportation costs included in the Price Cap?	No. Shipping, freight, customs and insurance costs are not included in the price cap and must be invoiced separately at commercially reasonable rates.	No. Shipping, freight, customs, and insurance costs are not included in the price cap and must be invoiced separately and at commercially reasonable rates. While shipping and insurance are covered services, these costs are distinct from the price cap on Russian oil	No. Excludes cost of shipping and other services.
What if the Price Cap changes?	OFAC intends to authorise a period to complete the provision of services engaged for the maritime transport of Russian oil purchased in accordance with the previous price cap. No detail in the guidance on how long this period will be.	If the price cap is amended by the Price Cap Coalition there is a wind down period of 90 days from the date of change for the transport and related services to the transport of Russian oil – provided that: a) the transport is based on a contract concluded before that date; and (b) the purchase price per barrel did not exceed the previous price cap at the date of conclusion of that contract.	Not covered in the guidance.
Exceptions to Price Cap	(i) It involves 'tank heeling' or a de minimis amount of Russian oil left over in the bottom of a container or tank. (ii) The oil or oil products do not originate in Russia, e.g. crude oil that transits through a pipeline in the Russian Federation e.g. Caspian Pipeline Consortium oil or Atyrau-Samara pipelines permitted as even though exported through Russia it is of Kazakh origin	(i) Caspian Pipeline Consortium pipeline, provide cert of origin proves oil is a majority Kazakhstan oil (even if mixed with unavoidable Russian oil residue). (ii) Crude oil or petroleum products of non-Russian oil that contain a de minimis amount of Russian oil left over from a container or tank	(i) Emergencies in the case of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment. OFSI must be notified within 5 working days of the act. (ii) The oil or oil products do not originate in Russia, are not owned by a person connected with Russia and are only being loaded in, departing from or transiting through Russia e.g

	(iii) Russia-related General Licence (GL) 8D authorizes certain transactions related to energy involving certain designated Russian financial institutions (iv) GL 57 permits transactions prohibited by the determination necessary to address vessel emergencies related to the health or safety of the crew or environmental protection. (v) GL 55 authorises until 12:01am EDT transactions related to maritime transport of crude oil originating from Sakhalin-2 project for import into Japan. (vi) GL56 authorises certain transactions related to the importation of Russian oil into Bulgaria, Croatia or landlocked EU Member States as described in Council Regulation (EU) 2022/879 of June 3 2022	(iii) Exempted projects e.g. transport by vessel to Japan (iv) transport or technical assistance, brokering services or financing or financial assistance, necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment, or as a response to natural disasters, provided that the national competent authority has been notified immediately once the event has been identified.	Caspian Pipeline Consortium oil permitted as even though exported through Russia it is of Kazakh origin. (iii) It involves 'tank heeling' or a de minimis amount of Russian oil left over in the bottom of a container or tank. (iv) A Specific Licence has been issued by OFSI
Knowledge			
Tier Level 1	Actors who regularly have direct access to price information in the ordinary course of business, such as commodities brokers and oil traders.	Actors who have direct access to price information in the ordinary course of business, includes: Commodities brokers and traders and other persons acting in their capacity as seller or buyer of Russian oil.	Persons who have or have direct access to price information paid for a cargo in their ordinary course of business. Examples include: • Importers; • Commodities brokers; and • Commodities traders,
Tier Level 2	Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business,	Actors who are sometimes able to request and receive price information from their customers in the ordinary	Persons directly interacting with parties with price information (Tier 1 parties) but do not have direct access to price information themselves. Includes but not limited to:

	such as financial institutions, ship/vessel agents and customs brokers.	course of business, i.e. financial institutions, custom brokers.	• Financial institutions providing trade finance; • Shipping companies chartering a vessel for the purpose of shipping an Russian oil cargo
Tier Level 3	Actors who do not regularly have access to price information in the ordinary course of business, such as insurers, P&I Clubs, shipowners and flagging registries.	Actors who do not have direct access to price information in the ordinary course of business: Insurers (including P&I Clubs) shipowners, ship management companies, flagging registries.	Entities with no access to price information, either through their own transactions or those of their Tier 1 or Tier 2 counterparties. Includes but not limited to: • Insurance brokers; • Cargo insurers; • P&I insurers; • Re-insurers; • Ship owner However, in the example at Annex D of the guidance the shipping company is a Tier 2 actor as in that example it contracts direct with the trader. In this context shipping company may mean the Charterer In this example the shipping company is also referred to as a "shipper" which would appear to be a misunderstanding of the term.
ATTESTATION PROCESS			
Tier 1	To be afforded the "safe harbour" Tier 1 actors must maintain and retain documents showing that Russian oil was purchased at or below the relevant price cap. Such documentation may include invoices, contracts or receipts/proof of payment.	Tier 1 Actors should retain and share, as needed, documents that show that seaborne Russia oil was purchased at or below the price cap. Such documentation may include invoices, contracts ore receipts/proof of accounts payable.	Must retain price information and share it with Tier 2 & 3 actors on request. The information to be shared includes: • The unit price • Details as to the most recent transaction (including load/discharge, unit price of the oil and price cap at the time of the transaction.

		If buying CIF need a breakdown of the costs in order to identify different expenses and keep a record of the CP agreement.	• Price cap at the time of sharing the information.
Tier 2	To be afforded the safe harbour must, to the extent practicable, request and retain price information documents that show that Russian oil was purchased at or below the relevant price cap. When not practicable to request and receive such information, Tier 2 Actors must obtain and retain customer attestations (from their downstream customers or contractors), in which the customer commits that for the service being provided, the Russian oil was purchased or will be purchased at or below the relevant price cap.	When practicable, Tier 2 actors request, retain and share as needed documents that show the oil was purchased at or below the price cap. When not practicable to request and receive such information, should obtain and retain customer attestations in which the customer commits not to purchase seaborne oil above the price cap.	Must: • Request and retain price information and/or a signed attestation from their Tier 1 counterparty, (which must be received before completing the transaction and within 5 working days of request) • Share this information/attestation onward in the chain with any party that requests it. • Ask and receive confirmation that their Tier 1 counterparty has reported its use of OFSI's General Licence(s) as required. • Undertake sufficient due diligence on Tier 1 provided to satisfy themselves of the reliability of the information
Tier 3	To be afforded the safe harbour Tier 3 Actors must obtain and retain customer attestations, in which the customer commits that for the service being provided, the Russian oil was purchased or will be purchased at or below the relevant price cap. Shipowners or other carriers (who do not in the ordinary course of business have information regarding the pricing of the underlying cargo) must obtain and retain an attestation from their customer/contractual counterparty regarding compliance with the	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. This can be done through a sanctions exclusion clause or through the use of a price cap attestation. The attestation can be a separate document or annexed to the CP or B/L.	Must request price attestation from relevant Tier 1 or Tier 2 counterparties (either through provision of a signed attestation or inclusion of an attestation in contractual obligations) If transacting with a Tier 1 actor ask for and receive confirmation that their Tier 1 counterparty has reported its use of OFSI's General licence(s) Providers of Insurance or other Periodic services may obtain a signed attestation as part of their annual insurance policy review

	price cap. **Unlike for insurers, sanction exclusions clauses do not appear to be sufficient for shipowners.** Insurers, reinsurers & P&I Clubs can be afforded the safe harbour through use of sanctions exclusion clauses in policies or contracts (including pre-existing sanctions exclusion clauses) for example as part of their annual renewal or these Actors can also use the attestation process.	**Shipowners can also adjust the sanctions clause** to warrant no trade will be carried out above the price cap and ensure that this obligation is applied effectively through the CP chain. **Shipowners are required to do the necessary due diligence such that it would be reasonable to rely on the attestation provided by their customer. The attestation can be shared with insurers.** Shipowners are not required to obtain further attestations from subsequent buyers of the cargo if sold during transit.	or any other periodic review of service agreements as such attestations may cover multiple instances of supply or delivery as long as the Russian oil or oil products are traded at or below the oil price cap. **BUT Actors relying on an attestation or other price information documentation from Tier 1 actors, or any associated counterparties must undertake sufficient due diligence to satisfy themselves, based on the information available of the reliability and accuracy of that information.**
Information required in the attestation	None specified although sample attestation provided	None specified although sample attestation provided.	• Name, address and details of both parties involved in the transaction for which the attestation is required. • Signature of representatives of both parties • Details of the person providing the attestation based on their knowledge of the price information • Any associated documentation, even if this person is not directly involved in the transaction proposed. Sample form of attestation provided in the guidance

Additional requirements	As part of the safe harbour, OFAC expects that U.S. service providers will continue to implement and perform standard due diligence customary for their industry and their role in the transaction. NB in the 14 May 2020 Global Advisory - business practices recommended to address red flags include exercising supply chain due diligence.	Record keeping and attestation process is in addition to standard, ongoing due diligence. EU operators should hold the necessary attestations at the moment they conclude their contracts.	Service providers who carry out periodic spot-checks of time linked service contract to ensure compliance should continue to do so. Those that do not should consider doing so where reasonably practicable. **THIS SUGGESTS AN ONGOING DUE DILIGENCE OBLIGATION.**
Reporting	No specific reporting requirements but documents and attestations must be retained for 5 years.	EU legislation does not require operator to report, but the documents/attestations should be retained for 5 years so that compliance can be verified by national authorities during controls or investigations.	UK reporting requirements for each tier set out below.
Tier 1	N/A	N/A	Require to report to OFSI each time they undertake activity purporting to be permitted under a General Licence issued by OFSI, within 30 days of each transaction. If multiple reports are required these can be consolidated.
Tier 2	N/A	N/A	A Tier 2 when dealing directly with a Tier 1 entity must: • Seek price information or a price attestation from the Tier 1 entity; and • Ask and receive confirmation that the Tier 1 entity has reported to OFSI as above. If they do not receive this confirmation they must inform OFSI of this within 30 days and withdraw their services as soon as reasonably practicable.

	USA	EU	UK
Tier 3	N/A	N/A	A Tier 3 entity dealing directly with a Tier 1 entity must proceed as outlined for a Tier 2 entity above.
Record Keeping **Period**	Service providers must retain relevant records for 5 years in accordance with 31 CFR 501.601	Records (including records of attestation) should be retained for 5 years.	Attestations must be retained for 4 years beyond the calendar year the attestation was created if the parties are relying on the general licence.
Form	No set form	No set form	In English. May be stored electronically or on paper and must demonstrate adherence to the conditions and obligations of the relevant General Licence
RED FLAGS indicating possible breach	OFAC would view the billing of commercially unreasonable shipping, freight, customs or insurance costs as a sign of potential evasion of the price cap. A customer's or counterparty's refusal or reluctance to provide the necessary documentation or attestation. Not specifically mentioned in the revised guidance issued on 22 Nov but the previous version of the guidance in Sept 2022 referred to the global advisory issued by the US Dept. State and the Treasury on May 14, 2020, and stated that these may serve as indictors that actors may be evading the price cap: • Disabling or manipulating AIS Physically altering vessel identification • Falsifying cargo and vessel documents; • Ship to Ship transfers (STS) • Voyage irregularities • False flags and flag hopping • Complex ownership or management	EU operators have to perform due diligence calibrated to the specifics of their business and the risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk assessment. Such sanctions compliance programmes can assist in detecting red flag transactions that can be indicative of a circumvention pattern. Other best practices include: establishing automatic identification system (AIS) best practices and contractual requirements, monitoring ships throughout their entire transactions lifecycle, adopting Know Your Customer (KYC) and counterparty practices, exercising supply chain due diligence, incorporating best practices into contractual language and information sharing within the industry.	If the cost of shipping and other services these deviates significantly from the market price this could indicate an attempt to circumvent the price cap. The provision of any monetary or non-monetary benefits to the Russian exporter, Russian State or entities linked with Russia at any time in return for access to Russian oil and/or oil products seemingly below the price cap will be considered as circumvention of the prohibitions

		Based on the previous version of the guidance Red flags could include: • Disabling or manipulating AIS in breach of international or EU law • Falsifying cargo and vessel documents • Ship to ship transfers • Voyage irregularities • False flags and flag hopping • Complex ownership or management • Refusal or reluctance to provide price information • Abnormal shipping routes • Newly formed companies or intermediaries • Unusually favourable payment terms, inflated costs or circuitous or opaque payment mechanisms.	
Enforcement and Consequence of a Breach	Any person who violates, evades, avoids, causes a violation of or attempts to violate the determination could be subject to civil or criminal enforcement action by OFAC. "Safe Harbour" U.S service providers that comply in good faith with a record keeping and attestation process will not face OFAC penalties - the so called "safe harbour". This is designed to shield service providers from strict liability for breach of sanctions in	In cases where an EU operator without direct access to price information reasonably relies on an attestation, after performing appropriate due diligence, and such attestation was falsified or provided by illegitimate actors – the EU operator would not be considered to be in breach of the price cap, provided they acted in good faith. National competent authorities will ascertain that EU operators have taken all the necessary steps, in good faith, to ensure oil is purchased at or below the price cap. It should be noted that,	OFSI may take the following steps: • Issue a warning • Refer regulated professionals or bodies to their regulator • Publish information re: a breach if this is in the public interest • Impose a monetary penalty (on a strict liability basis) • Refer the matter to law enforcement agencies for criminal investigation **BUT** If a person can demonstrate to OFSI that they have fulfilled the requirements of

	cases where service providers inadvertently deal in the purchase of Russian oil sold above the relevant price cap owing to falsified or onerous records provided by those that act in bad faith or make material misrepresentations. OFAC will not pursue a penalty in these circumstances unless the US provider knew or had reason to know that such documentation was falsified or erroneous or that the oil has been purchased above the price cap.	according to Article 10 of Regulation No 833/2014, actors will not face liability of any kind "if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation." Violations by EU Flagged vessels would be subject to consequences that follow each Member States national legislation. In the case of third country flagged vessels there is a prohibition on the provision of services by EU operators relating to the transport of Russian crude oil or petroleum products in relation to third country flagged vessels which in the past transported such goods purchased above the price cap, provided the operator responsible for that transport knew or had reasonable cause to suspect that this was the case. In the event of an intentional breach of Article 3n paragraph 7 by a third country flagged vessel the resulting prohibition would entail the loss of EU services for transporting Russian oil by that vessel for a period of 90 days following the date of unloading of the cargo purchased above the price cap.	the attestation process in a timely manner and in full to OFSI's satisfaction and undertaken appropriate due diligence, OFSI does not anticipate taking enforcement action against that person. **This includes suspected breach cases where a counterparty has falsified an attestation.**
Payment of insurance claims	Not covered in the guidance	(i) If insurance ceases by 5 December 2022 claims arising between 4 June and 5 December 2022 can be paid even after 5 December (ii) If insurance continues after 5 December 2022 in compliance with the price	Not covered in the guidance

		cap there is no limitation as to when claims may be paid	