

## RUSSIAN OIL PRICE CAP

Since 5 December 2022, UK, EU, and U.S. restrictions on the maritime transport of Russian crude oil to third countries have come into effect. This includes a ban on providing finance, brokerage, shipping, or insurance services. Only Russian crude oil bought at or below the recently announced 'price cap' is exempt from these restrictions.

### The Crude Oil Price Cap

Effective as of 5 December 2022, only Russian crude oil bought at or below **US\$60 per barrel** (the "**Crude Oil Price Cap**") is exempt from UK, EU, and U.S. bans on the maritime transport of Russian crude oil to third countries. The domestic import of Russian oil, regardless of price, is already banned under UK, EU, and U.S. laws.

The Crude Oil Price Cap, agreed together with other G7 countries, will be reviewed as of mid-January 2023 and every two months after, with a 90-day wind-down period after each price change. A similar price cap is expected to come into effect for Russian petroleum products on 5 February 2023.

The UK has published several General Licences to enable the Crude Oil Price Cap (together, the "**General Licences**"):

- **Oil Price Cap General Licence INT/2022/2469656**: authorises UK persons to conduct maritime transport and provide financial and brokering services, for crude oil by ship from Russian to a third country, or between third countries, provided that the unit price is at or below the Crude Oil Price Cap. This General Licence also authorises credit institutions to process payments in relation to these activities.
- **Wind-down General Licence INT/2022/2470256**: provides a 45-day exemption for the above activities in relation to any Russian crude oil above the Crude Oil Price Cap that was loaded onto a Ship at the port of loading prior to 5:01 a.m. GMT, 5 December 2022, and offloaded at the port of destination prior to 5:01 a.m. GMT, 19 January 2023. This General Licence also authorises credit institutions to process payments in relation to these activities.
- **Correspondent banking and payment processing General Licence INT/2022/2470056**: indefinitely authorises credit institutions to process, clear or send payments from any person / entity in connection with financial services and funds relating to maritime transportation of Russian crude oil.
- **Exempt Projects and Countries General Licence INT/2022/2470156**: provides temporary exemptions for a specified project related to Japan and for transfers into Bulgaria and landlocked EU member states.

The General Licences come with reporting obligations and the UK's Office of Financial Sanctions Implementation ("**OFSI**") has issued several forms related to the use of the General Licences. These include notification, attestation, licence application and breach reporting forms.

The EU has also introduced:

- the transitional exemption period of 45 days for Russian oil loaded before 5 December 2022 and unloaded before 19 January 2023. Notably, this does not refer to the time as in the UK General Licence.
- an 'emergency clause' exemption for transport and related services where 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 in response to natural disasters.

The UK, EU and U.S. have subsequently released and/or updated guidance in relation to the Crude Oil Price Cap (the "**Guidance**").

### How does the Crude Oil Price Cap work?

The Crude Oil Price Cap operates by way of exceptions from the prohibitions in UK, EU, and U.S. sanctions on Russian crude oil. This means that unless the Russian crude oil is bought at or below the Crude Oil Price Cap:

- shippers and charterers cannot transport Russian crude oil.
- credit institutions cannot finance Russian crude oil transactions.
- insurance (and re-insurance) companies cannot provide their services to vessels carrying Russian crude oil.

The Guidance makes it clear that the Crude Oil Price Cap:

- does not affect non-Russian oil products originating in a third country which are only loaded in, departing from, or transiting through Russia.
- applies from loading of the Russian oil onto a ship, until the point of delivery (passing through customs controls) to a third country.
- only covers the purchase price of the Russian oil and not any ancillary costs (such as shipping, freight, customs, insurance, transportation, and legal fees).

The Guidance (and the General Licences) also implement extensive evidential, record keeping, and attestation requirements relating to the Crude Oil Price Cap. The specific requirements for various industry participants differ depending on the position of each participant assessed by reference to a tier system that has been agreed between the UK, EU, and U.S.

- **Tier 1** are operators that know, or can directly access, the price per barrel of Russian oil, such as commodities brokers, commodities traders, and importers.
- **Tier 2** are operators that interact with parties who have price information and can therefore request and receive the price per barrel of Russian oil, such as financial institutions (EU), financial institutions providing transaction-based trade finance (UK), customs brokers, charterers, and ship agents.
- **Tier 3** are operators with no direct access to the price per barrel of Russian oil, such as cargo insurers, flagging registries, insurance brokers, P&I clubs, reinsurers, ship owners and ship management.

The three tiers are subject to different obligations which correspond to the level of information available to each.

The UK differs from the EU and U.S. in that it (i) imposes additional reporting obligations on operators dependent on their above tier, and (ii) requires records to be kept for four years after the calendar year which the record was created. The EU and U.S. instead require records to be kept for a minimum of five years from the date of transportation or the transaction.

Both the UK and U.S. sanctions also include a “safe harbour” from enforcement for service providers who in good faith collect and rely on, and maintain, appropriate records or attestations from others showing that the price cap was complied with.

## Consequences of breach

While shipowners and traders need to understand the full impact of these measures, it is also vitally important that service providers such as banks and insurers understand the impact on them.

Examples of consequences for breaching the Crude Oil Price Cap rules include the following:

- UK-based ship operators who “knew or had reasonable cause to suspect” that oil was purchased above the oil price cap will be subject to UK penalties. The UK’s maximum penalty is the greater of GBP 1 million or 50% of the value of the breach.
- If a third country-flagged vessel intentionally carries Russian oil above the price cap, EU operators will be prohibited from insuring, financing, and servicing this vessel for 90 days after the cargo has been delivered.
- The usual range of enforcement tools is available to EU member states where there is a breach of sanctions by an EU entity. These vary between EU member states but are likely to include both civil and criminal measures.
- EU flagged vessels will be subject to penalties according to national legislation, but the EU is already working on a penalty of 5% of global turnover for companies that break EU sanctions.
- Member states may enforce against insurers themselves that provide insurance in breach of the Crude Oil Price Cap.

## What should you do now?

The Crude Oil Price Cap is already resulting in EU and UK carriers and insurers requesting additional compliance information.

Similar requirements are likely to be made by non-EU carriers that rely on EU insurance (or whose insurance risk is ceded to European markets) as the EU's prohibitions on the provision of services applies in respect of all vessels, not just those subject to EU jurisdiction.

## Some key considerations:

- Ensure any Russian oil above the Crude Oil Price Cap, and already loaded on ships before 5 December 2022, will be delivered (and customs cleared) in a third country before 19 January 2023.
- Ensure that any Russian oil which is loaded onto or carried on vessels complies with the Crude Oil Price Cap.
- Comply with all evidential, attestation and reporting (for UK operators) obligations when making use of the Crude Oil Price Cap or other exemptions.
- Consider whether your existing contract wording is sufficient.
- EU based insurers must conduct due diligence on members and assureds and apply a "look back" period of 90 days to ensure that vessels have not discharged any cargo in breach of the price cap in that period.
- Maintain careful records of the due diligence carried out, to ensure you can rely on any available defence.

We can help you navigate these, and other sanctions queries. Please contact us using the details below.

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