DECISIONS

COUNCIL DECISION (CFSP) 2022/2369

of 3 December 2022

amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 31 July 2014, the Council adopted Decision 2014/512/CFSP ([1]).

(2) The Union remains unwavering in its support for Ukraine's sovereignty and territorial integrity.

(3) On 6 October 2022, the Council adopted Decision (CFSP) 2022/1909 ([2]), which introduced an exemption from the prohibition to provide maritime transport and 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. That exemption is intended to mitigate adverse consequences on energy supply to third countries and reduce price surges driven by extraordinary market conditions, while limiting Russian oil revenues.

(4) In view of the situation, and taking into account the discussions within the Price Cap Coalition, the effectiveness of the measure in terms of its expected results, international adherence to and informal alignment with the price cap mechanism, and its potential impact on the Union and its Member States, it is appropriate to introduce the price cap for crude oil, that is the price per barrel at or below which crude oil from Russia is exempt from the prohibition to provide maritime transport and the prohibition to provide technical assistance, brokering services or financing or financial assistance, related to the maritime transport to third countries.

(5) It is also appropriate to introduce further measures. In particular, it is appropriate to clarify the existing prohibition on the trading and brokering of Russian crude oil and petroleum products and extend the price cap exemption when such goods are traded at or below the price cap.

(6) It is also appropriate to extend the transition period applicable to the transport of crude oil and certain petroleum products after every subsequent change in the price cap for a period of 90 days to the provision, directly or indirectly, of technical assistance, brokering services or financing or financial assistance, related to the transport, subject to the same conditions. This measure is necessary to ensure consistent implementation of the price cap by all operators.

(7) It is also appropriate to introduce a transitional period of 45 days for vessels carrying crude oil originating in Russia, which was purchased and loaded onto the vessel prior to 5 December 2022 and unloaded at the final port of destination prior to 19 January 2023.

([1]) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

([2]) Council Decision (CFSP) 2022/1909 of 6 October 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 259I , 6.10.2022, p. 122).

(8) Moreover, it is appropriate to clarify that 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 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. This is necessary in order to ensure legal certainty.

(9) It is appropriate to introduce an exemption from the prohibition to provide maritime transport and the prohibition to provide technical assistance, brokering services or financing or financial assistance, related to the maritime transport to third countries, 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 as a response to natural disasters.

(10) Finally, it is appropriate to introduce a regular review of the price cap mechanism to take into account the effectiveness of the measure in terms of its expected results, its implementation, international adherence to and informal alignment with the price cap mechanism, and its potential impact on the Union and its Member States, and to respond to developments in the market, including possible turbulences. Such review needs to take into account the objectives of the price cap, including its ability to reduce Russia's oil revenues, as well as the principle that the price cap should be at least 5% below the average market price for Russian oil and petroleum products. The average market price should be calculated in cooperation with the International Energy Agency. Any considerations that would potentially affect the functioning and terms of the price cap would be raised within the Price Cap Coalition, following discussion in the Council. In order to evaluate market developments in a timely manner, such review should be conducted as of mid-January 2023 and the Council should return to the issue every 2 months thereafter.

(11) Taking into account the current circumstances, which are challenging the competitiveness of EU shipping, as well as the fact that the shipping industry is a slowly recovering sector of the economy, the Commission intends to urgently adopt appropriate supportive measures, including by further developing existing instruments at the latest by 5 February 2023, aiming at preserving the credibility and strategic importance of the Union's shipping industry, maintaining and further enhancing the competitiveness of EU shipping, while protecting the interest of the competitive operation of ships which are flying the flags of Member States, as well as encouraging the re-flagging of ships to Member States' ship registers.

(12) Further action by the Union is needed in order to implement certain measures.

(13) Decision 2014/512/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/512/CFSP is amended as follows:

(1) Article 4p is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. It shall be prohibited to provide, directly or indirectly, technical assistance, brokering services or financing or financial assistance, related to the trading, brokering or transport, including through ship-to-ship transfers, to third countries of crude oil or petroleum products which originate in Russia or which have been exported from Russia.';

(b) paragraph 4 is replaced by the following:

'4. It shall be prohibited to trade, broker or transport, including through ship-to-ship transfers, to third countries crude oil falling under CN code 2709 00, as of 5 December 2022, or petroleum products falling under CN code 2710, as of 5 February 2023, as listed in Annex XXV to Regulation (EU) No 833/2014, which originate in Russia or which have been exported from Russia.';

(c) paragraph 5 is replaced by the following:

'5. The prohibition in paragraph 4 of this Article shall apply as from the date of entry into force of the first Council Decision amending Annex XI in accordance with point (a) of paragraph 9 of this Article.

As from the date of entry into force of every subsequent Council Decision amending Annex XI to this Decision, the prohibitions in paragraphs 1 and 4 of this Article shall not apply, for a period of 90 days, to the transport of products listed in Annex XXV to Regulation (EU) No 833/2014 which originate in Russia or which have been exported from Russia, and to the provision, directly or indirectly, of technical assistance, brokering services or financing or financial assistance, related to the transport, provided that:

(a) the transport or the provision of technical assistance, brokering services or financing or financial assistance, related to the transport is based on a contract concluded before the date of entry into force of every subsequent Council Decision amending Annex XI to this Decision; and

(b) the purchase price per barrel did not exceed the price laid down in Annex XI to this Decision on the date of conclusion of that contract.';

(d) paragraph 6 is replaced by the following:

'6. The prohibitions in paragraphs 1 and 4 shall not apply:

(a) as of 5 December 2022, to crude oil falling under CN code 2709 00, and as of 5 February 2023, to petroleum products falling under CN code 2710, which originate in Russia or which have been exported from Russia, provided that the purchase price per barrel of such products does not exceed the prices laid down in Annex XI to this Decision;

(b) to crude oil or petroleum products as listed in Annex XXV to Regulation (EU) No 833/2014 where those goods 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;

(c) to the transport, or to technical assistance, brokering services, financing or financial assistance related to such transport, of the products mentioned in Annex XII to this Decision to the third countries mentioned therein, for the duration specified in that Annex;

(d) as of 5 December 2022, to crude oil falling under CN code 2709 00, which originates in Russia or which has been exported from Russia purchased above the price laid down in Annex XI to this Decision which 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.';

(e) paragraph 8 is replaced by the following:

'8. In the event that, after the entry into force of a Council Decision amending Annex XI, a vessel has transported the Russian crude oil or petroleum products referred to in paragraph 4, and the operator responsible for the transport knew or had reasonable cause to suspect that such crude oil or petroleum products were purchased above the price laid down in Annex XI on the date of conclusion of the contract for such purchase, it shall be prohibited to provide the services referred to in paragraph 1 relating to the transport of crude oil or petroleum products that originate in Russia or are exported from Russia as referred to in paragraph 4 by that vessel for 90 days following the date of unloading of the cargo purchased above the price cap.';

(f) the following paragraphs are added:

'10. The prohibitions in paragraph 1 and 4 shall not apply to the transport or provision of technical assistance, brokering services or financing or financial assistance, related to the transport 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.

11. The Member States and the Commission shall inform each other of detected instances of a breach or circumvention of the prohibitions set out in this Article.

Any information provided or received in accordance with this Article shall be used for the purposes for which it was provided or received, including ensuring the effectiveness of the measure.

12. The functioning of the price cap mechanism, including Annex XI as well as the prohibitions in paragraphs 1 and 4 of this Article, shall be reviewed as of mid-January 2023 and every 2 months thereafter.

The review shall take into account the effectiveness of the measure in terms of its expected results, its implementation, international adherence to and informal alignment with the price cap mechanism, and its potential impact on the Union and its Member States. It shall respond to developments in the market, including possible turbulences.

In order to achieve the objectives of the price cap, including its ability to reduce Russia's oil revenues, the price cap shall be at least 5% below the average market price for Russian oil and petroleum products, calculated on the basis of data provided by the International Energy Agency.'.

(2) Annex XI is amended as set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 3 December 2022.

For the Council
The President
M. BEK

ANNEX

In Annex XI to Decision 2014/512/CFSP the following table is added:

'CN Code	Description	Price per barrel (USD)	Date of application
2709 00	Petroleum oils and oils obtained from bituminous minerals, crude	60	5 December 2022'