

OIL IMPORTS

RELATED PROVISIONS: ARTICLE 3m AND ARTICLE 3n OF COUNCIL REGULATION
833/2014

FREQUENTLY ASKED QUESTIONS – AS OF 2 AUGUST 2023

1. Does paragraph 1 of Article 3m prohibit the transport of goods listed in Annex XXV of Council Regulation (EU) 833/2014 also to third countries?

Last update: 30 June 2023

No, as clarified in recital 15 of Council Regulation (EU) 2022/879, the transport of the goods in Annex XXV is only prohibited into the Union. However, as set out in Article 3n, maritime transport, including through ship-to-ship transfers, to third countries, as well as technical assistance, financing or any financial assistance in relation to such transport to third countries is prohibited, unless such goods were purchased at or below the price cap.

2. Does Article 3m prohibit imports into the Union, including by pipeline, or the purchase or transfer, of goods listed in Annex XXV which originate in a third country but are mixed during transport with goods listed in Annex XXV and which originate in Russia?¹

Last update: 30 June 2023

Article 3m paragraph 1 prohibits, subject to certain exceptions and derogations, imports of goods set out in Annex XXV if such goods originate in Russia or are exported from Russia. It does not prohibit the import into the Union, including by pipeline, of oil originating in another third country, for example in Kazakhstan.

It is therefore necessary 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 prohibition. However, as a consequence of transportation through a pipeline that serves both non-Russian and Russian origin productions, oil originating in a third country can be mixed for technical reasons with Russian originating oil, due to infrastructural constraints. Such mixing should not increase or facilitate the production and or marketing of Russian-origin oil, nor generate any avoidable financial flows or indirect benefits in favour of Russian actors for the Russian-origin oil transported via the pipeline, excluding the necessary transportation costs.

In such a case, as oil is a fungible material that cannot be physically segregated once mixed, a quantity corresponding to the volume not originating in Russia can be allowed into the Union

¹ See also recital 21 of Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 153, 3.6.2022, p. 53–74.

if the share of the transported oil which does not originate in Russia can be clearly demonstrated to the national authorities of the Member State, for instance through documentation proving the exact volume of oil originating in the non-Russian third country, such as a certificate of origin.

Therefore, the import into Member States of oil of Kazakh origin, as proven by a certificate of origin or other documentation providing evidence on the origin of the product, including by pipeline is allowed. Such import may contain some unavoidable Russian oil residue for technical reasons or infrastructural constraints. Its import into the Union is allowed and does not fall within the scope of Article 3m.

Economic operators and Member States, in cooperation with exporting third countries, need to exercise sufficient care and investigation to comply with EU restrictive measures.

3. Does Article 3m prohibit the import into the EU of petroleum products falling under HS 2710 which have been produced using crude oil originating in Russia?

Last update: 22 June 2022

As regards petroleum products under HS 2710, only those which originate in Russia or are exported from Russia fall under the general prohibition set out in Article 3m paragraph 1.

An analysis of the production process and proportion of the components used is needed to determine the origin. For example, refined petroleum products obtained in a third country **falling under HS 2710** from Russian crude oil **falling in HS 2709** and exported from that country or another third country would not be subject to the sanctions as it is not of Russian origin.

Petroleum products **falling under HS 2710** obtained in a third country mixing Russian oil **falling under HS 2710** and locally produced oil exported from that third country could be subject to the sanction depending on the proportion of the Russian component. A case-by-case analysis is needed to see if the rule of origin is satisfied.

4. In Article 3m paragraph 9, could you clarify what is meant by the “essential needs of the purchaser in Russia”?

Last update: 22 June 2022

The exception laid down in paragraph 9 allows EU natural or legal persons situated in Russia, which are bound by the sanctions by application of Article 13(c) and (d) of Regulation 833/2014, to purchase goods listed in Annex XXV for their own daily consumption, for instance to refuel their car or heat their homes. This would typically apply to EU tourists visiting Russia, EU expats living in Russia, EU humanitarian aid providers etc. It would also apply to a branch of an EU company in Russia which would need to purchase the goods for its own use. It would not cover however purchases of such goods for resale or refining for example.

5. Can an EU operator resell goods set out in Annex XXV which were imported into the Union prior to 4 June 2022?

Last update: 22 June 2022

Yes, the prohibition set out in Article 3m does not apply to goods which were already released for free circulation within the territory of the Union prior to 4 June 2022.

6. What sort of situation does the exception set out in article 3m paragraph c) cover?

Last update: 22 June 2022

This provision clarifies that the import prohibition as set out in paragraph 1 and 2 of Article 3m does not apply to goods listed in Annex XXV which do not originate in Russia and are not owned by a Russian natural or legal person, but which for the purpose of their export to the EU have been loaded in Russia or have departed or transited through Russia.

7. How can the prohibitions to resell, transfer or transport set out in paragraph 7 and 8 of article 3m be enforced, in particular as regards resales, transfers or transport to other Member States?

Last update: 22 June 2022

EU operators and national authorities must conduct appropriate due diligence before purchasing goods listed in Annex XXV from other Member States which benefit from the exceptions laid down in Article 3m(3)(d) (crude imports by pipeline) or from the specific derogations set out in paragraphs 5 and 6 (for Bulgaria) and (Croatia). When purchasing such goods, they should do the necessary checks to ensure that such goods do not originate from Russia, are not exported from Russia or are not petroleum products (CN 2709 10) which are obtained from crude oil originating or exported from Russia.

8. Does the prohibition to transfer or transport to other Member States or third countries refined petroleum products as from 5 February 2023 obtained from crude oil imported by pipeline also cover blended products, which are the result of refining of Russian crude oil and crude oil from another country?

Last update: 22 June 2022

Yes, the prohibition applies to blended products. Where the oil is mixed in line with the procedure described in question 2, the approach in the answer to question 2 should be followed.

9. Does Article 3m allow the import into the EU of oil from a third country other than Russia by a pipeline which would transit through Russia using its infrastructure?

Last update: 30 June 2023

There are currently no restrictions on the import into the Union by a pipeline of oil from a third country, other than Russia, which would transit through Russia using its infrastructure. Article 3m only applies to oil originating or exported from Russia. However, if such oil from a third country is blended with oil originating in Russia, the approach specified in question 2 should be followed.

10. Does the prohibition to transfer or transport crude oil delivered by pipeline to other Member States or third countries also prohibit the purchase of oil by a Member State via an intermediary company based in another Member State?

Last update: 22 June 2022

The prohibition of resale set out in paragraph 8 of Article 3m does not apply to situations where a Member State purchases its crude oil using a company based in another Member State provided that this intermediary does not receive the physical delivery of the oil. Indeed, Article 8 prohibits the transfer or transport of crude oil delivered by pipeline into Member States to other Member States. If there is no delivery of the oil into the Member State where the intermediary is based, the use of an intermediary does not fall under the resale prohibition set out in paragraph 8.

11. Does the notification obligation of contracts executed during the transitory periods laid out in Articles 3m (3)(a) and (b) in particular regarding ‘ancillary contracts’ require also the notification of insurance contracts or contracts for the services accompanying the maritime transport ?

Last update: 22 June 2022

No, such an interpretation would create an unreasonable administrative burden on EU operators involved as well as on national competent authorities. Only contracts for the import of the goods should be notified.

12. Does Article 3m allow the transfer or transport to other Member States or to third countries of crude oil originating in or exported from Russia and delivered by pipeline during the transitory periods set out in Article 3m paragraph 3(a) and (b)? How about refined products obtained from such crude oil?

Last update: 22 June 2022

As regards crude oil (CN 2709 00), the transfer or transport of such crude imported by pipeline to another Member State or third countries is prohibited from the entry into force of the Regulation (4 June 2022) as set out in paragraph 8. For petroleum products (CN 2710) obtained from such crude oil, the prohibition only applies as of 5 February 2023, with a longer transition time concerning Czechia (see also question 8 above).

The transfer or transport of petroleum products (CN 2710) refined from crude oil imported by pipeline to another Member State or third country during the transition period of 8 months is not prohibited.

13. How shall the term ‘one-off transaction for near-term delivery’ be understood?

Last update: 22 June 2022

‘One-off transaction for near-terms delivery’ should be understood as spot market transactions. The contract concluded cannot foresee multiple deliveries and the oil should be delivered within 30 days maximum after the transaction has been concluded.

14. Regarding such one-off transactions, when should these be notified?

Last update: 22 June 2022

The Regulation foresees their notification within 10 days of their completion. This should be understood as within 10 days of the final delivery of the goods.

15. How should the prohibition in Article 3m(7) and (8) of Regulation (EU) 833/2014 to transfer, transport or sell, as of 5 February 2023, petroleum products obtained from Russian crude imported by pipeline or on the basis of a derogation granted by national competent authorities be implemented?

Last update: 4 February 2023

In order to meet the technical requirements of refineries in some Member States which still import crude oil from Russia, and to ensure the security of fuel supply in the region, compliance with this prohibition may be ensured over a one-year period. For that purpose, a reporting mechanism should be set up at national level, which would apply to operators from the refining sectors and to traders active in sale and export from these Member States.

The reporting of products refined and exported may be done on an aggregated basis using a mass balance approach. In such a case, Member States should ensure that the volume of total exportable products falling under CN 2710 within the total production is no more than the total volume of products obtained from feedstocks other than Russian crude.

National authorities should report to the Commission on compliance with the prohibition at mid-term (6 months after 5 February 2023).

Operators purchasing refined petroleum products from refiners situated in these Member States should reassure themselves that their suppliers sell their products in compliance with the above-mentioned requirements.

This does not apply to the exports from Hungary, Slovakia and Bulgaria to Ukraine of certain products, which may benefit from a derogation as set out in paragraphs 7 and 8.

16. Does Article 3m(2) prohibit technical assistance, brokering services, financing or financial assistance or any other services related to operation and maintenance of pipelines (and associated infrastructure) in Russia used to transport crude oil or petroleum products, as listed in Annex XXV.

Last update: 30 June 2023

No. Article 3m(2) does not apply to the operation and maintenance of a pipeline nor associated infrastructure in Russia, even if it is transporting oil or petroleum products. Article 3m relates to technical assistance, brokering services, financing or financial assistance or any other services related to the import, transfer or purchase of oil and petroleum products if they originate in Russia or are exported from Russia, not to the pipelines transporting them (nor associated infrastructure necessary for such transport) since these are not listed in Annex XXV.

At the same time, the relevant provision is Article 3(1) which addresses goods or technology, as listed in Annex II. Article 3(2) addresses technical assistance, brokering services or other services, financing and financial assistance related to such goods and technology. Pipelines are among the goods listed in Annex II. However, Article 3(3)(a) provides that the prohibitions in Article 3(1) and 3(2) shall not apply when such goods, technology or services are necessary for

the transportation of natural gas and oil, including refined petroleum products, unless prohibited by other provisions, from or through Russia. Consequently, Article 3(3)(a) allows for the technical assistance, including the operation and maintenance of a pipeline which would transport crude oil or petroleum products from or through Russia into the Union, unless it is prohibited under Article 3m and 3n. Such technical assistance is not prohibited by Articles 3m and 3n.

17. Can a vessel operate ship-to-ship transfers of Russian oil in EU territorial waters, including its internal waters?

Last update: 2 August 2023

Article 3m prohibits the purchase, import or transfer of Russian oil or petroleum products into Member States². Ship-to-ship transfers (STS) could be characterised as either purchase, import or transfer, as the case may be.

In any event, such STS go beyond the mere transit of the territory of the Union and their practice does not fall under the scope of the right of innocent passage. Such STS are therefore prohibited in territorial waters, internal waters and ports of Member States, irrespective whether the oil is:

- i. transported by EU or non-EU vessels,
- ii. destined for the Union or a third country, or
- iii. purchased at or above the price cap.

Beyond the territorial waters of a Member State, and in accordance with Article 3eb(2), any vessel that has not notified a ship-to-ship transfer within the EEZ or up to 12 nautical miles from the baseline shall be prohibited from accessing ports or locks of the Union.

18. Can a vessel operate ship-to-ship transfers of Russian oil in the EEZ of a Member State or within 12 nautical miles from the baseline of that Member State's coast?

Last update: 2 August 2023

In accordance with Article 13, EU sanctions apply throughout the territory of the Union including its territorial waters. Beyond the territorial waters, in accordance with Article 3eb(2), any vessels performing such transfers of Russian oil must notify these to the relevant Member State. Absent such notification, port access is prohibited.

Article 3eb(2) does not affect the prohibition to import Russian oil set out in Article 3m.

In addition, if an EU operator is involved, such STS transfers must comply with the price cap in line with paragraphs 1 and 4 of Article 3n.

² Recital 15 of Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.