

Newsletter No.

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## Swiss sanctions in relation to the situation in Ukraine REMINDER: Frozen Asset Update Requirement until 16 February 2024

On 21 December 2023 and 1 February 2024, the State Secretariat for Economic Affairs (SECO) updated its Guidelines dedicated to the interpretation of the Ordinance instituting measures in relation to the situation in Ukraine of 4 March 2022 (the Ordinance).

Under §2 of pt. 1.5 of the Guidelines (and the relevant Excel tables) financial intermediaries must provide SECO with updated figures relating to frozen assets (value date 31 December 2023) by **16 February 2024**.

# Financial intermediaries must provide SECO with updated figures relating to frozen assets by 16 February 2024.

On 21 December 2023 and 1 February 2024, the State Secretariat for Economic Affairs (**SECO**) updated its guidelines (the **Guidelines**) dedicated to the interpretation of the Ordinance instituting measures in relation to the situation in Ukraine of 4 March 2022 (the **Ordinance**).

Under §2 of pt. 1.5 of the Guidelines, financial intermediaries are required to provide SECO with updated figures relating to frozen assets (re Art. 15 of the Ordinance and Art. 16 of the Ordinance), with value date 31 December 2023, by **16 February 2024** (the **Update Requirement**).

The relevant Excel form is available on the SECO website. SECO prefers the Update Requirement to be made electronically via PrivaSphere Secure Messaging.

SECO have also fixed the deadline of **29 March 2024** for any outstanding compulsory declarations to be made under Art. 16(1bis) of the Ordinance (regarding *transactions carried out in the two weeks preceding the inclusion (...) in Annexe 8*), for all sanctioned persons, undertakings and entities added to Annexe 8 before 1 December 2023.

Failure to make either declaration above may result in a violation of the Federal Act on the Implementation of International Sanctions of 22 March 2002 (Status as of 1 July 2023) (**EmbA**).

## Amendment of the Guidelines

### SECO Update Request regarding Frozen Assets

#### 1. Frozen Asset Update Requirement

Under §2 of pt. 1.5 of the Guidelines, financial intermediaries are required to provide SECO with updated figures relating to frozen assets (value date 31 December 2023), by 16 February 2024.

#### 2. Original Source of the Obligation to Declare Frozen Assets

The original requirements (a) to freeze assets and (b) to declare such frozen assets to SECO stem from Art. 15 of the Ordinance (*Freezing of assets and economic resources*), respectively Art. 16 of the Ordinance (*Mandatory declaration regarding the freezing of assets and economic resources*).

Art. 16(1) of the Ordinance and Art. 16(1bis) of the Ordinance only respectively require a single declaration to be made to SECO, to the contrary for example to Art. 21 of the Ordinance (*Mandatory declaration relating to existing deposits*) which requires an update to be made every 12 months.

The update here required by SECO is an update relating to the (single) *declaration regarding the freezing of assets and economic resources* under Art. 16 of the Ordinance.

#### 3. Legal Basis of the Update Requirement

Although Art. 16 of the Ordinance does not contain any obligation to update the information, pursuant to Art. 3 of the Federal Act on the Implementation of International Sanctions of 22 March 2002

(Status as of 1 July 2023) (**EmbA**), the supervisory authorities may request information and documentation that is required for comprehensive assessment or supervision to be carried out, from anyone who is directly or indirectly affected by measures in accordance with the EmbA.

The SECO acts as a supervisory authority relevant to Art. 16 of the Ordinance. Pursuant to Art. 2 EmbA and the heading of the Ordinance, the Ordinance itself constitutes a measure put in place in accordance with the EmbA. The SECO may thus request information from anyone affected by Art. 16 of the Ordinance, including financial intermediaries.

We understand the above to be the legal basis of SECO's Update Requirement.

#### 4. Affected Parties

The terminology of §2 of pt. 1.5 of the Guidelines, when considered in French or German, is not coherent with that of the relating Excel table (see pt. 5 hereunder).

In the French version of §2 of pt. 1.5 of the Guidelines, the term *institutions financières* is used, translated in the German version into *Finanzinstitute*.

Whilst *institutions financières* does not have any obvious definition under Swiss law, *Finanzinstitute* would point to the definition found under Art. 2 of the Federal Act on Financial Institutions of 15 June 2018 (**FinIA**), which in French would translate into *établissements financiers*.

If such *Finanzinstitute/établissements financiers*, pursuant to Art. 2 FinIA, were to be the target of the Update Requirement, then banks would be excluded from the Update Requirement.

On the other hand, the Excel table provided for by the SECO in relation to the Update Requirement uses the term *Finanzintermediäre/intermédiaire financier*. Pursuant to the definition of such, i.e. financial intermediaries under Art. 2(2) of the Anti-Money Laundering Act of 10 October 1997 (**AMLA**), banks would be within the scope of the Update Requirement.

The following would notably be within scope of the Update Requirement as per Art. 2(2) AMLA : (i) banks, (ii) portfolio managers and trustees, (iii) fund management companies, (iv) investment companies with variable capital, limited partnerships for collective investment and investment companies with fixed capital, as well as the managers of collective assets, (v) insurance institutions, (vi) securities firms, (vii) central counterparties and central securities depositories, (viii) payment systems that require authorisation from the Swiss Financial Market Supervisory Authority (FINMA), (ix) trading facilities for DLT securities, (x) casinos,

(xi) promoters of large-scale games and (xii) trade assayers and group companies.

#### 5. Form of Update Requirement

The Update Requirement must be provided to SECO by means of the Excel table available on the SECO website. Such document can also be found [here](#) in French, and [here](#) in German.

Such Excel table requires the following information: (i) name of the financial intermediary, (ii) name of the account holder, (iii) banking relation number, (iv) account/deposit number, (v) beneficial owner, (vi) applicable sanctions regime, (vii) sanctioned individual's SSID (sanction-set-id), (viii) sanctioned individual's family name, (ix) sanctions individual's given name, (x) date of initial communication to SECO re freezing, (xi) reason of freezing, (xii) currency of initially frozen and declared assets, (xiii) amount of initially frozen and declared assets, (xiv) value date of initially frozen and declared assets, (xv) currency as of 31 December 2023, (xvi) amount as of 31 December 2023, (xvii) justification in the event of particular differences compared with the assets initially declared (excluding variations due to price fluctuations, interest charges or credits, dividend distributions, expense charges or other).

SECO specifies in the Guidelines that it prefers updates to be made electronically, via the PrivaSphere Secure Messaging platform.

#### 6. Further Information Requirement regarding Art. 16(1bis) of the Ordinance

The updated Guidelines also sets the deadline of **29 March 2024** - for all entries into Annex 8 made before 1 December 2023 - for any compulsory declarations pertaining to Art. 16(1bis) of the Ordinance: all persons and institutions that hold or manage assets or have knowledge of economic

resources belonging to or controlled by natural persons, undertakings and entities included in the list in Annex 8 must notify SECO without delay of all transactions carried out in the two weeks preceding the inclusion of these persons, undertakings and entities on the list in Annex 8.

Such declaration is compulsory for all existing or future entries into Annex 8. All declarations relating to entries after 1 December 2023 must be made *without delay*.

Declarations must be made via a table which may be obtained directly from SECO by email ([sanctions@seco.admin.ch](mailto:sanctions@seco.admin.ch)).

Once again, SECO prefers submissions to be made electronically, via the PrivaSphere Secure Messaging platform.

The following information must be provided: information relating to any movement, transfer, modification, use of, access to or manipulation of the assets of natural persons, undertakings or entities included on the list in Annex 8 to the of the Ordinance during the two weeks preceding their inclusion.

It is assumed that this information is already available, generally in existing files and documents. There is no obligation to carry out additional investigations, with the exception of checking existing files and documents.

#### 7. Consequence of non-compliance

Failure to make either declaration above may result in a violation of the EmbA.

Violations of Art. 3 EmbA/Art. 16 of the Ordinance are punishable in accordance with Art. 10 EmbA, such provision providing for a fine of up to CHF 100,000 in case of wilful violations and a fine of up to CHF 40,000 for cases of negligence.

Attempts and aiding and abetting are also liable for prosecution.

### **Conclusion**

Considering the extensive scope of the sanctions under the Ordinance and the questions their application can often raise as well as the criminal consequences a breach thereof entails (pursuant to the EmbA), activities and businesses which may be impacted call for a scrutinised review and assessment on a case-by-case basis.

### **Questions**

If you require legal advice on matters relating to sanctions, please do get in touch with your usual contact person at Walder Wyss or send an e-mail to [sanctions@walderwyss.com](mailto:sanctions@walderwyss.com).

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