

Newsletter No.

164

Swiss sanctions in relation to the situation in Ukraine

After having decided on 28 February 2022 to adopt sanctions against Russia mirroring the packages of sanctions adopted by the European Union on 23 and 25 February 2022, the Swiss Federal Council adopted further restrictive measures in connection with the situation in Ukraine which entered into force on 4 March 2022 at 18:00.

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What is the scope of the sanctions regime currently in place in Switzerland?

The scope of the new sanctions pursuant to the 4 March 2022 Ordinance instituting measures in relation to the situation in Ukraine (*Verordnung über Massnahmen im Zusammenhang mit der Situation in der Ukraine / Ordonnance instituant des mesures en lien avec la situation en Ukraine*) (the **Ordinance**) is extensive, targets hundreds of individuals and dozens of entities and includes (i) commercial restrictions targeting weapons, military goods, dual use items and technologies, the aviation and space sector, the energy sector (including in relation to oil exploration, extraction and refining) and other imports and exports, (ii) monetary and financial restrictions and (iii) entry and transit restrictions.

Commercial restrictions

Besides a general prohibition to import into the Russian Federation and Ukraine **weapons, explosives and similar goods**, the Ordinance prohibits:

- the sale, delivery, export, transit and transport of:
 - **military goods** (as listed in Annex 3 to the Swiss Goods Controls Ordinance);
 - **dual-use goods** (as listed in Annex 2 to the Swiss Goods Controls Ordinance);
 - other goods which contribute to the military and technological strengthening of Russia or to the development of the defence and security sector (as listed in Annex 1 to the Ordinance); and
- the **provision of services** of any kind, including financial services, brokering, technical advice, and the granting of financial means in relation to the sale, delivery, export, transit, transport, provision, manufacturing, maintenance or use of the above-mentioned goods to the Russian Federation or Ukraine or intended for use in these countries is also prohibited (or to a certain extent subject to State Secretariat for Economic Affairs (**SECO**)'s authorisation in case of dual-use goods to Ukraine or intended to be used in Ukraine).

Furthermore,

- in relation to the **aviation and space sector**, the sale, delivery, export and transit (directly or indirectly) of certain goods (including aircraft, spare parts, equipment) (as listed in Annex 3 to the Ordinance) in relation to individuals, corporations or any other entities in the Russian Federation or which may be used therein, as well as certain related activities (including overhaul, repair, inspection, replacement, modification or the provision of technical assistance, brokering, as well as the granting of insurance or reinsurance) are prohibited along with the financing or the granting of financial support in relation to such goods and activities; and
- in relation to the **oil industry** (including in relation to oil refining) the sale, delivery and transit of certain goods (as listed in Annexes 4 and 5 of the Ordinance) are prohibited, as well as the provision of services of any kind, including financial services, brokering, technical advice, and the granting of financial means in relation to the sale, delivery, export, transit, transport, provision, manufacturing, maintenance or use of the above-mentioned goods to the Russian Federation or Ukraine or intended for use in these countries is also prohibited. Specific restrictions further apply in relation to oil

exploration and oil extraction projects and the Ordinance further contains certain exceptions and authorisation regimes for certain goods and activities related to the oil industry.

Finally:

- **imports** of any goods from **Crimea, Sevastopol, Donetsk and Luhansk** (as further specified in Annex 6 to the Ordinance) and the provision of financial services, insurance and reinsurance in relation to such goods is prohibited unless a valid certificate of origin issued by the competent Ukrainian authorities is available; and
- the sale, delivery, export and transit of certain goods (as listed in Annex 7 to the Ordinance) is prohibited if said goods are for individuals, individuals, corporations or any other entities located in the aforementioned territories. The Ordinance further contains certain exceptions and authorisation regimes for certain goods and activities.

Financial restrictions

1. Asset freeze

All **assets and economic resources** belonging to or controlled by individuals, corporations or any other entities belonging to or controlled by individuals, corporations and entities listed in Annex 8 to

the Ordinance are **subject to an asset freeze** as from 28 February 2022 at 18:00. Assets and economic resources are broadly defined and include, amongst others, financial assets, means of payment, dividends, guarantees, crypto based assets, transfer of ownership for security purposes and financial instruments for purposes of financing exports as well as real estate and luxury goods. It is further prohibited to provide such individuals, corporations and entities, directly or indirectly, with funds or economic assets, subject to certain limited exceptions which may be authorised by SECO.

Furthermore, individuals and institutions **holding or managing assets** or economic resources subject to this asset freeze shall **report to SECO** without delay the name of the beneficiary and nature of such assets and economic resources.

2. Prohibition of financing and public financial support in favour of commercial exchanges

The granting of financings and any public financial support in favour of commercial exchanges with the Russian Federation or investments therein are, subject to certain exceptions, prohibited.

3. Restrictions related to transferable securities and money market instruments

Assisting in relation to **issuance** and/or **trading of, dealing with** as well as **providing investment services** with respect to the following transferable securities and money market instruments are prohibited:

- transferable securities and money market instruments with a term exceeding 90 days, issued after 27 August 2014 until 12 November 2014 or with a term exceeding 30 days, issued after 12 November 2014 until 12 April 2022, by certain banks or other entities located in the Russian Federation, their controlled enti-

ties based outside Switzerland and the entities acting on their behalf or upon their instructions/directions (as listed in Annex 9 to the Ordinance);

- transferable securities and money market instruments with a term exceeding 30 days, issued after 12 November 2014 to 12 April 2022, by certain banks or other entities located in the Russian Federation, their controlled entities based outside Switzerland and the entities acting on their behalf or upon their instructions/directions (as listed in Annexes 12 and 13 to the Ordinance);
- transferable securities and money market instruments issued after 14 March 2022 by the Russian Federation or its government, the central bank of the Russian Federation or an entity acting on behalf of upon instructions/directions of the central bank of the Russian Federation; and
- transferable securities and money market instruments issued after 12 April 2022 by certain banks or other entities located in the Russian Federation, their controlled entities based outside Switzerland and the entities acting on their behalf or upon their instructions/directions (as listed in Annexes 9 to 13 to the Ordinance).

Furthermore, as of 12 April 2022, it is prohibited to list and **provide services on trading venues** registered or recognised in Switzerland for transferable securities of banks, corporations and any other entities located in the Russian Federation or owned (more than 50%) by the Russian State.

4. Prohibition to grant loans

The **granting of loans** (directly or indirectly) to banks or other entities located in the Russian Federation, their controlled entities based outside Switzerland and the entities acting on their behalf or upon their instructions/direction or to the Russian Federation or its government,

the central bank of the Russian Federation or an entity acting on behalf of upon instructions/directions of the central bank of the Russian Federation is subject to stringent restrictions, subject to specific exceptions (e.g. in relation to certain commercial exchanges between Switzerland and the EU, or for the financing of certain goods and services necessary for the performance of a commercial agreement between Switzerland and the EU).

Also, the Ordinance contains certain exceptions in relation to drawdowns made under arrangements existing prior to 28 February 2022.

5. Prohibition to accept deposits

Subject to limited exceptions (for some, subject to prior authorisation), it is prohibited to accept **deposits of more than CHF 100,000** from Russian citizens or residents or from banks, corporations or other entities established in the Russian Federation. However, this prohibition does not apply to Swiss or European citizens or to individuals residing in Switzerland or in the EU.

The **holding of such deposits** (i.e. in excess of CHF 100,000) must be **reported to SECO** by 3 June 2022 and updated every 12 months.

6. Prohibition for central securities depositories to provide certain services

Swiss central securities depositories are prohibited from providing services to Russian citizens or residents and to banks, corporations or other entities established in the Russian Federation. However, this prohibition does not apply to Swiss or European citizens or to individuals residing in Switzerland or in the EU.

7. Prohibition related to certain securities

It is prohibited to sell **CHF and EUR denominated transferable securities**

issued after 12 April 2022 or units in collective investment schemes providing exposure to such securities to Russian citizen, individuals residing in the Russian Federation or any bank, corporation or other entity located in the Russian Federation. However, this prohibition does not apply to Swiss or European citizens or to individuals residing in Switzerland or in the EU.

8. Prohibition related to transactions with the central bank of the Russian Federation

Transactions related to the management of reserves or assets of the central bank of the Russian Federation, including transactions with any bank, corporation or any other entity acting for on its behalf or upon its instructions/directions are prohibited.

9. Prohibitions related to financings, holdings and services in certain territories

The granting of loans or credits or the provision of investment services in relation therewith, to corporations or entities established in **Crimea, Sevastopol, Donetsk** and **Luhansk** (as further specified in Annex 6 to the Ordinance) are prohibited and so too is the acquisition or increase of holdings in corporations or real estate in such territories (including in the form of co-investment, partnership, joint venture or the like).

10. Prohibition in relation to specialised financial messaging services

As of 12 March 2022, it is prohibited to **provide specialised financial messaging services** (e.g. SWIFT) to certain banks, corporations and other entities (as listed in Annex 14 to the Ordinance) or to any other bank, corporation or entity located in the Russian Federation and controlled (more than 50%) by banks, corporations and other entities listed in Annex 14 to the Ordinance.

11. Prohibition in relation to CHF and EUR denominated banknotes

The sale, provision, transfer or export of banknotes denominated in CHF or in EUR to, for or in the Russian Federation (including through individuals and entities) are prohibited.

12. Prohibition to settle certain claims

It is prohibited to settle certain claims based on an agreement, arrangement or for any matter, whose performance has been prevented or impacted by restrictions imposed under the Ordinance or previous similar measures.

This prohibition applies to claims owed to:

- individuals, corporations and other entities listed in Annexes 2 and 8 to 14 of the Ordinance;
- any other Russian individual, corporation or other entity;
- individuals, corporations and other entities acting on behalf or upon instructions/directions of the afore-mentioned categories.

Further restrictions

Subject to limited exceptions, the entry into and transit through Switzerland are prohibited to individuals listed in Annex 8 to the Ordinance.

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 Federal Act on the Application of International Sanctions (*Bundesgesetz über die Durchsetzung von internationalen Sanktionen/Loi fédérale sur l'application de sanctions internationales*)), activities and businesses which may be impacted call for a scrutinised review and assessment on a case-by-case basis.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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