

Newsletter No.

166

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## Swiss sanctions in relation to the situation in Ukraine

16 March 2022 saw numerous changes to the Swiss sanctions regime: (i) the addition of a further 197 individuals and 9 additional entities to the list of sanctioned individuals and entities under the Ordinance instituting measures in relation to the situation in Ukraine, (ii) some guidelines from the State Secretariat for Economic Affairs (SECO) regarding the application of some provisions of said Ordinance and (iii) a new Ordinance instituting measures against Belarus, which came into force on the same day at noon.

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walderwyss attorneys at law

# What are the latest developments of the sanctions regime currently in place in Switzerland?

On 16 March 2022, the Federal Department of Economic Affairs, Education and Research (EAER) amended the list of sanctioned individuals and entities as listed in Annex 8 to the 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 **Ukraine Ordinance**).

On the same day, the State Secretariat for Economic Affairs (SECO) issued some guidelines regarding the interpretation of the Ukraine Ordinance with respect to the prohibition to accept certain deposits and the related reporting obligations.

Further, also on 16 March 2022, the Federal Council approved the total revision of the Ordinance on Measures against Belarus (*Verordnung über Massnahmen gegenüber Belarus / Ordonnance instituant des mesures à l'encontre du Bélarus*) (the **Belarus Ordinance**). The newly adopted measures concern goods and financial services in particular. Due consideration is being given to humanitarian activities.

## Amendments to the Ukraine Ordinance

As a result of the amendments which entered into force on 16 March 2022 at noon, **a further 197 individuals** are now subject to financial sanctions and travel restrictions and 9 additional entities are now subject to financial sanctions. Assets in Switzerland belonging to these individuals must be frozen and reported to SECO. These changes reflect the EU's latest changes in respect of sanctioned individuals and entities published by the European Council on 15 March 2022, thus **Switzerland's list of sanctions now fully mirrors the one of the EU**.

An overview of the scope of the Ukraine Ordinance can be found in our previous Newsletter No. 164 on the topic, released on 11 March 2022 (see [here](#)).

## SECO's guidelines regarding the deposit prohibitions and reporting obligations

SECO issued some guidelines (the **Guidelines**) regarding the interpretation of the Ukraine Ordinance with respect to the prohibition to accept certain deposits and the related reporting obligations. Although not legally binding this document clarifies certain items in order to

ensure that the implementation of the corresponding provisions of the Ukraine Ordinance is as close as possible to the implementation practice of the equivalent sanctions in the EU, stressing that the Swiss authorities are in contact with the competent EU authorities for this purpose, thus reserving the right to supplement or adapt this document and practice in the future.

Subject to limited exceptions (for some, subject to prior authorisation), pursuant to Article 20 of the Ukraine Ordinance, 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. Furthermore, pursuant to Article 21 of the Ukraine Ordinance, 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.

According to the Guidelines:

- the prohibition to accept deposits and corresponding reporting obliga-

tions fall with all banks in accordance with the Banking Act and to all institutions with a license in accordance with Article 1b of the Banking Act, thus excluding for instance insurance companies;

- the report does not need to comply with a specific form and can be made by email to SECO ([sanctions@seco.admin.ch](mailto:sanctions@seco.admin.ch)) and must be in an aggregated form (i.e. number of affected business relationships and the sum of the corresponding current balances). Regrettably, neither the Ukraine Ordinance nor the Guidelines clearly confirm an exclusion of any criminal and civil liability of the above-mentioned banks and licensed institutions for a breach of official, profession or trade secrecy or be held liable for breach of contract as otherwise foreseen by the Swiss Anti-Money Laundering Act for reportings related to suspicion of money laundering;
- with respect to calculating the CHF 100,000 threshold, the following must be taken into account:
  - dividend payments can be

accepted even if they exceed CHF 100,000;

- the deposit and safekeeping of securities do not fall under the definition of "deposits" according to Article 20 of the Ukraine Ordinance;
- proceeds from the sale of securities deposited within the framework of the corresponding business relationship may be accepted, even if they exceed CHF 100,000. In our view this should extend to liquidation proceeds from funds and other financial products at maturity, however the Guidelines do not cover any further specific cases at this stage;
- the limit of CHF 100,000 refers to the total deposits per client with the relevant bank or institution (i.e. if a client has, for example, CHF 80,000 in existing deposits, a maximum of CHF 20,000 of deposits can still be accepted. If a client has CHF 110,000 in existing deposits, no additional deposits can be accepted);
- deposits that are immediately debited to repay outstanding credits are not covered by the definition of "deposits" in Article 20 of the Ukraine Ordinance. Consequently, such payments can be accepted even if they exceed the limit of CHF 100,000;
- dual Swiss and Russian nationals, as well as persons who hold both Russian and EU citizenship, are not subject to the prohibition set forth in Article 20 of the Ukraine Ordinance. On the other hand, persons with both Russian citizenship and citizenship of another non-EU country are subject to the prohibition of Article 20 of the Ukraine Ordinance;
- funds located outside Russia in

which a Russian individual holds a stake as an investor do not fall under Article 20 of the Ukraine Ordinance. However, under Article 23 of the Ukraine Ordinance, it is prohibited to sell units of collective investment schemes with exposure to securities denominated in Swiss francs or euros to Russian nationals or residents in the Russian Federation, or to banks, companies or organisations established in the Russian Federation;

- existing deposits – regardless of their current amount – can be freely used and also withdrawn; and
- internal transfers within a bank between different accounts of the same Russian account holder are allowed.

Furthermore, the Swiss Financial Market Supervisory Authority (FINMA) has requested banks with Russian clients not to increase their exposure to the Russian clientele. Many banks will therefore refuse certain transactions with Russian nationals beyond the scope of the Ukraine Ordinance to comply with their regulatory requirements.

Further guidelines from SECO are to be expected in light of the questions related to the practical implementation of the sanctions in Switzerland.

### Sanctions against Belarus under the Belarus Ordinance

#### Commercial restrictions

The Belarus Ordinance prohibits:

- the sale, delivery, export, transit and transport of:
  - **military goods** of any kind, including ammunitions, vehicles and equipment and accessories, as well as similar goods likely to be used for repression;
  - **dual-use goods** (civilian or military), regardless of their

end-use or end-user;

- certain goods (as listed in Annex 2 to the Belarus Ordinance) related to the **surveillance or interception of Internet or telephone communications**);
- other goods which contribute to Belarus's military and **technological enhancement or the development of the defence and security sector**;
- certain **machines** (as listed in Annex 4 to the Belarus 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 are also prohibited (or to a certain extent subject to State Secretariat for Economic Affairs (**SECO**)'s authorisation).

Furthermore, existing import bans against Belarus will also be extended. These bans now also apply to wood products, products made of rubber, iron and steel, and cement.

### Financial Restrictions

#### 1. Asset freeze

All **assets and economic resources** belonging to or (directly or indirectly) controlled by individuals, corporations or any other entities belonging to or controlled by (i) individuals, corporations and entities listed in Annex 13 to the Belarus Ordinance (**Sanctioned Parties**) or otherwise acting in the name of or upon instructions/directions of Sanctioned Parties, (ii) corporations and entities belonging to or controlled by a Sanctioned Party or otherwise acting in the name of or upon instructions/directions of Sanctioned Parties, are **subject to an**

**asset freeze** as from 16 March 2022 at 12:00. 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, except for certain limited cases for which SECO may grant an authorisation.

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. Insurance and reinsurance related products

The entering into, as well as the extension or renewal of, insurance or reinsurance policies with Belarus (including its government, administrative bodies, state corporations and government agencies), individuals, corporations and entities acting for it are prohibited, except, in particular, with respect to mandatory insurance or civil liability insurance services to Belarussian individuals or entities for risks located in Switzerland or in the EU.

## 3. 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 activity with Belarus or investments therein are, subject to certain exceptions, prohibited.

## 4. Restrictions related to the issuance and trading of financial instruments

The issuance of financial instruments with a term exceeding 90 days and the

providing of related services are prohibited when the issuer is (i) Belarus (including its government, administrative bodies, state corporations and government agencies), (ii) certain banks or other corporations established in Belarus (as listed in Annex 14 to the Belarus Ordinance), (iii) a bank, corporation or entity located outside Switzerland and the EU, which is controlled (more than 50%) by banks, corporations or other entities referred to in (i) and (ii) above or (iv) a corporation or entity acting for or upon instructions/directions of a bank, a corporation or any other entity referred to in (i), (ii) and (iii).

The trading of financial instruments issued after 29 June 2021 with a term exceeding 90 days by a bank, a corporation or any other entity referred to above is prohibited.

## 5. Prohibition to grant loans

The granting of loans with a maturity exceeding 90 days is prohibited to i) Belarus (including its government, administrative bodies, state corporations and government agencies), (ii) certain banks or other corporations established in Belarus (as listed in Annex 14 to the Belarus Ordinance), (iii) a bank, corporation or entity located outside Switzerland and the EU, which is controlled (more than 50%) by banks, corporations or other entities referred to in (i) and (ii) above or (iv) a corporation or entity acting for or upon instructions/directions of a bank, a corporation or any other entity referred to in (i), (ii) and (iii).

This prohibition does not apply to loans financing commerce between Switzerland or the EU and countries not targeted by the Belarus Ordinance. Also, the Belarus Ordinance provides that SECO can authorise a derogation in limited cases.

## 6. 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 Belarussian citizens or residents or from banks, corporations or other entities established in Belarus. 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.

It must be expected that the Guidelines are to apply similarly to the Belarus Ordinance.

## 7. Prohibition for central securities depositories to provide certain services

Swiss central securities depositories are prohibited from providing services to Belarussian 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.

## 8. 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 Belarussian citizen, individuals residing in Belarus or any bank, corporation or other entity located in Belarus. However, this prohibition does not apply to Swiss or European citizens or to individuals residing in Switzerland or in the EU. We assume that this does not cover the sale of shares in a company by or to these persons.

## 9. Prohibition related to transactions with the National Bank of the Republic of Belarus

Transactions related to the management

Bank of the Republic of Belarus, including transactions with any bank, corporation or any other entity acting for or on its behalf or upon its instructions/directions are prohibited.

#### 10. Prohibition in relation to specialised financial messaging services

As of 27 March 2022, it will be prohibited to **provide specialised financial messaging services** (e.g. SWIFT) to certain banks, corporations and other entities in Belarus.

#### 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 Belarus (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 Belarus Ordinance or previous similar measures.

This prohibition applies to claims owed to:

- Belarus, its government, administrative bodies, state corporations and government agencies;
- Sanctioned Parties;
- any other Belorussian individual, corporation or other entity; and
- 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 13 to the Belarus Ordinance.

Finally, Belarusian air carriers holding an operating certificate or an equivalent authorisation issued by the Belarusian authorities are prohibited from landing at or taking off from Swiss airports.

#### Conclusion

Considering the extensive scope of the sanctions under the Ukraine Ordinance and the Belarus 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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