

Newsletter No.

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## Swiss sanctions in relation to the situation in Ukraine

Federal Council took the decision to adopt the new EU sanctions decided against the Russian Federation on 9 and 15 March 2022 as implemented by the Swiss Federal Council's decision of 25 March 2022 to amend the "Ordinance instituting measures in relation to the situation in Ukraine" which entered into force on 25 March at 11pm.

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

On 18 March 2022, the Swiss Federal Council took the decision to adopt the new EU sanctions decided against the Russian Federation on 9 and 15 March 2022, as implemented by the Swiss Federal Council's decision of 25 March 2022 to amend 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 **Ordinance**) with effect (unless otherwise indicated herein) as from 25 March 2022 at 11pm. This fourth package of sanctions includes more extensive measures in relation to goods, restrictions on transactions with certain state-owned enterprises and a ban on providing rating services to Russian clients or entities.

Furthermore, the export of goods and related services for the Russian energy sector is now prohibited. Also prohibited is the participation in businesses active in the energy sector and the provision of loans or other financial resources to such businesses. These prohibitions, however, do not apply to nuclear energy (for civilian purposes) and the transport of energy products.

A ban is introduced on the import of iron and steel goods from, or originating in the Russian Federation, as well as a ban on the export of maritime navigation goods and luxury goods to the Russian Federation. The ban on the export of luxury goods contained in the new sanctions is expected to affect only a small portion of Switzerland's global exports of such goods. However, specific companies could be seriously affected.

In the financial sector, transactions with certain state-owned companies and the provision of credit rating services are prohibited. However, the Swiss Federal Council has decided to allow certain exceptions from the financial sanctions for humanitarian purposes. This eases business relationships necessary for the work of humanitarian organisations.

This means that all measures contained in the EU's fourth package of sanctions have been implemented.

However, the Federal Council took the decision not to implement the EU measure of 1 March 2022 suspending the broadcasting of contents from certain Russian media outlets, namely Sputnik and Russia Today. In its statement, the Swiss Federal Council indicated that "despite the fact that these outlets are used to spread targeted propaganda and disinformation by the Russian Federation, the Federal Council is of the opinion that it is more effective to counter untrue and harmful statements with facts instead of preventing them from being broadcast".

## Amendments to the Ordinance

The amendments, which entered into force on **25 March 2022 at 11pm**, reflect almost fully the EU's latest changes in respect of sanctioned individuals and entities published by the European Council on 15 March 2022. However, whereas **Switzerland's list of sanctioned persons is expressed to fully mirror the one of the EU, it is worth mentioning that some individuals sanctioned at the level of the EU have not yet been included in the Ordinance.**

An overview of the scope of the Ordinance can be found in our previous Newsletters No. 164 (see [here](#)) and No. 166 (see [here](#)) on the topic, released on 11 March 2022 and 18 March 2022, respectively.

In addition to new commercial and financial restrictions, the amendments to the Ordinance bring certain clarifications, in particular with respect to the **definition of "securities"**, which now explicitly includes book-entry and intermediated securities, and derivatives. Also, refer-

ences to the EU have been replaced by references to European Economic Area, which includes the EU member States, as well as Iceland, Liechtenstein and Norway.

## Commercial restrictions

### 1. Maritime navigation goods and technology

The sale, supply, export, transit and transport of such goods and technology (as listed in Annex 16 to the Ordinance)

are now **prohibited** to any natural or legal person, entity or body in, for use in the Russian Federation, or for the placing on board of a Russian-flagged vessel. So too are the providing of technical assistance, brokering services, manufacture, maintenance, or otherwise the providing of financing or financial assistance in relation to the sale, supply, export, transit and transport of such goods and technology. However, when to or for use in Ukraine or for the placing on board of a Ukrainian-flagged vessel, the above-mentioned activities **are subject to authorisation**.

## 2. Energy sector

The prohibitions under the previous version of the Ordinance related to the **oil industry** (including in relation to exploration and oil extraction projects), have been replaced by prohibitions related to the broader **energy sector** (defined as "a sector covering the following activities with the exception of civil nuclear related activities: (i) the exploration, production, distribution within the Russian Federation or mining of crude oil, natural gas or solid fossil fuels, the refining of fuels, the liquefaction of natural gas or regasification, (ii) the manufacture or distribution within the Russian Federation of solid fossil fuel products, refined petroleum products or gas; or (iii) the construction of facilities or installation of equipment for, or the provision of services, equipment or technology for, activities related to power generation or electricity production). Accordingly, the sale, supply, delivery, export, transit and transport of certain goods related to the energy sector (as listed in Annex 5 to the Ordinance) to or for a use in the Russian Federation 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.

Specific **exceptions** apply, such as with respect to the transport of fossil fuel, in particular coal, oil and natural gas from or through the Russian Federation to Switzerland or the European Economic Area.

## 3. Iron and steel goods

The import, transport and purchase of certain **iron and steel goods** (as listed in Annex 17 to the Ordinance) originating in or exported from the Russian Federation are prohibited, as well as the provision of technical assistance, brokering, financial means or assistance and the granting of related insurance or reinsurance products.

## 4. Luxury goods

The sale, supply, export, transport and transit of certain **luxury goods** (as listed in Annex 18 to the Ordinance) to any individual, corporation and entity in or for use in the Russian Federation are prohibited. According to the Ordinance, any "luxury good" worth more than CHF 300 (per item and unless otherwise specified therein) and falling within one of the categories listed in Annex 18 to the Ordinance (including horses, caviar, wine, leather goods, electronic appliances, cars, watches, etc.) is deemed a sanctioned luxury good.

## Financial restrictions

### 1. Transactions with the Russian sovereign fund

Whereas 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 were already prohibited, these prohibitions now also apply to the **National Wealth Fund** (Russian sovereign fund).

### 2. Transactions with certain state-owned enterprises

Taking part, directly or indirectly, in any transaction with 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 Annex 15 to the Ordinance) is **prohibited, except**, amongst others, with respect to (i) transactions strictly necessary for the purposes of purchasing, importing and transporting fossil fuel, in particular coal, oil and natural gas, as well as titanium, aluminium, copper, nickel, palladium and iron ore from or through the Russian Federation to Switzerland or the European Economic Area, (ii) certain transactions related to energy projects outside the Russian Federation and (iii) transactions serving humanitarian purposes.

### 3. Credit rating services

As from 15 April 2022 at 11pm, the **provision of credit rating** (defined as an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories) services is prohibited and so too is the granting of **access to any subscription services in relation to credit rating activities** (defined as data and information analysis and the evaluation, approval, issuing and review of credit ratings) to Russian citizen or residents, and any bank, corporation or entity established in the Russian Federation.

These prohibitions do, however, not apply to Swiss citizens, citizens of a member State of the European Economic Area or to individuals residing in Switzerland or in a member State of the European Economic Area.

#### 4. Participations related to the energy sector

The following activities in relation to participations in businesses of the energy sector in the Russian Federation are prohibited:

- the acquisition of any new or extension of any existing **participation** in any legal person, corporations or entities established in or constituted pursuant to the laws of a State outside Switzerland or the European Economic Area and operating in the energy sector in the Russian Federation;
- granting **loans, credits**, as well as taking part to any corresponding transaction, or otherwise providing **financing**, including equity capital to any legal person, corporation or entity established in or constituted pursuant to the laws of a State outside Switzerland or the European Economic Area and operating in the energy sector in the Russian Federation or for the purpose of financing such persons, corporations and entities;
- the creation of any **new joint venture** with any legal person, corporation or entity established in or constituted pursuant to the laws of a State outside Switzerland or the European Economic Area and operating in the energy sector in the Russian Federation; and
- providing **investment services** directly related to the activities referred to above.

#### Sanctions interpretation and practice

Whereas the sanctions regime gives rise to numerous questions in terms of both interpretation and application thereof, in the absence of such Swiss guidance (other than in relation the guidelines issued by the State Secretariat for Economic Affairs (**SECO**) regarding

the interpretation of the prohibition to accept certain deposits and the related reporting obligations under the Ordinance (for further information please see our previous Newsletter No. 166 on the topic, released on 18 March 2022 (see [here](#))), the European Commission released a webpage addressing frequently asked questions (the **EU FAQ**) which, to a certain extent, however, can be considered (with caution) when assessing the scope and applicability of a provision of the Ordinance which is mostly mirroring the European sanctions regime.

For instance, besides the **freezing of assets**, Swiss sanctions regulations provide for a prohibition to make any **assets and economic resources available** to individuals, corporations or any other entities listed in Annex 8 to the Ordinance or to such belonging to or controlled by those listed individuals, corporations and entities.

When assessing the effective applicability of such prohibition, the EU FAQ can help understand the extent of the application of this provision (see [here](#)), as well as the practice developed in relation to the application of the sanctions imposed in connection with the conflict in Syria (see [here](#)). The European Commission interprets the prohibition to make economic goods and assets available **very broadly**, meaning that it is prohibited to sell or deliver products or services to such listed persons and entities, even **in exchange for adequate payment** (subject to exceptions). Thereby the European Commission confirms that goods or services are considered as economic resources and making such goods or services available to listed persons or entities would consequently be prohibited.

While awaiting comprehensive Swiss guidelines, the above should be considered with caution. Factually, a broad interpretation of the relevant provision could result in an (almost) **complete**

**prohibition** of all economic transactions with such persons and entities listed in Annex 8 to the Ordinance or with such owned or controlled by those.

#### 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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## Contact persons

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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