

Newsletter No.

168

Swiss sanctions in relation to the situation in Ukraine

On 13 April 2022, the Swiss Federal Council took the decision to adopt the new EU sanctions against the Russian Federation and Belarus. Amendments to the corresponding ordinances have been adopted by the Swiss Federal Council on 27 April 2022 and came into force on the same day at 6pm. Also, the Federal Department of Economic Affairs, Education and Research (EAER) had already updated the list of sanctioned individuals, companies and entities on 13 April 2022, resulting in the sanctioning of over 200 further individuals and entities.

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

On **13 April 2022**, the Swiss Federal Council took the decision to adopt the new EU sanctions decided against the Russian Federation and other restrictive measures against Belarus on 8 April 2022, as implemented by the Swiss Federal Council's decision of **27 April 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 **Ukraine Ordinance**) (unless otherwise indicated herein, as from **27 April 2022 6pm**).

As a consequence the list of sanctioned individuals and entities as listed in Annex 8 has been further expanded by the Federal Department of Economic Affairs, Education and Research (EAER) on **13 April 2022**, resulting in the sanctioning of over 200 further individuals and entities of a current total of some 1091 individuals and 80 entities.

In addition, this fifth package of sanctions covers new measures in the areas of trade, finance and transport. These include:

- bans on imports of coal and other goods that serve as important sources of revenue for the Russian Federation (such as wood, cement, seafood and vodka);
- an export ban on kerosene and other goods that could contribute to strengthening its industrial capacity (including industrial robots and certain chemicals);
- new financial sanctions, particularly regarding trusts;
- a ban on financial support for Russian public institutions; and
- restrictions on air traffic.

Also, on **14 April 2022**, the State Secretariat for Economic Affairs (**SECO**) updated its 16 March 2022 guidelines.

Newly sanctioned entities and individuals

As a result of the amendments to Annex 8 to the Ukraine Ordinance, which entered into force on **13 April 2022 at 6pm**, **a further 200 individuals and entities** are now subject to financial sanctions and, for those individuals, travel restrictions. 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 8 April 2022. The newly sanctioned individuals are from the fields of politics, industry, communications/propaganda and the armed forces, as well as key oligarchs and their family members. Two of President Putin's daughters are amongst the indivi-

duals newly sanctioned. Switzerland's list of sanctioned entities and individuals now fully mirrors that of the EU.

Amendments to the Ukraine Ordinance

The amended Ukraine Ordinance has been published on 27 April 2022 and contains additional commercial and financial restrictions. The new measures include **far-reaching sanctions on goods**, including a **ban on imports of lignite and coal** as well as on **goods that are deemed to be important sources of revenue** for the Russian Federation (e.g. timber, cement, seafood, caviar). In addition, there are **new export bans on goods** that can help **strengthen Russia's industrial capacities** (e.g. industrial robots or certain chemical products).

As a result, Switzerland has now implemented most of the new EU measures against Russia. However, whereas the EU has imposed a ban on Russian and Belarusian road transport undertakings preventing them from transporting goods by road within the EU, and a ban on access to EU ports for Russian vessels, said ban has not been adopted in Switzerland, as it was not deemed necessary for Switzerland due to its geographic location. Also, the EU bans concerning the award of public contracts to Russian nationals and organisations or entities established in Russia are (for the time being) further excluded. The implementation of these latter bans raises various questions regarding the allocation of competences between the Confederation and the can-

tons and the scope of application. On 27 April 2022, the Swiss Federal Council instructed the competent bodies to carry out the necessary clarifications and to report back by the end of June 2022. Currently, Russian nationals or individuals or companies based in the Russian Federation are of marginal importance for public tenders in Switzerland.

Commercial restrictions

1. Specific military goods exemption

For Switzerland to be able to fulfil its international obligations to the Organisation for the Prohibition of Chemical Weapons (**OPCW**), the Ukraine Ordinance now provides for an **exemption for the export of special military goods**. This is to enable Switzerland to export NBC (nuclear, biological, chemical) protective equipment under a request for assistance from the OPCW.

2. Derogations in relation to certain aircraft financial lease

Whereas the sale, supply, export and transit (directly or indirectly) of certain goods related to the aviation and space sector (as listed in Annex 3 to the Ukraine 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 are prohibited (along with the financing or the granting of financial support in relation to such goods and activities), the Ukraine Ordinance now foresees the possibility for SECO to authorise certain **derogations in relation to aircraft financial lease entered into before 5 March 2022**, provided, however, that (a) such derogations are strictly necessary to ensure lease re-payments to a legal person, entity or body incorporated or constituted under Swiss law or the law of a member State of the European Economic Area and (b) no economic resources

will be made available to the Russian counterpart, with the exception of the transfer of ownership of the aircraft after full reimbursement of the financial lease.

3. Export ban on jet fuel and fuel additives

The sale, supply, export and transit of **jet fuel and fuel additives** (as listed in Annex 19 to the Ukraine Ordinance) to or for use in the Russian Federation, as well as the providing of **services of any kind**, including financial services, technical assistance, brokering services, or otherwise the providing of financial means for such goods or in relation to the sale, supply, export, transit or manufacturing of such goods are **prohibited**.

When to or for use in Ukraine, the above-mentioned activities are subject to authorisation.

4. Export ban on goods which could contribute to the enhancement of Russian industrial capacities

The sale, supply, export, transit and transport of certain **goods which could contribute to the enhancement of Russian industrial capacities** (as listed in Annex 23 to the Ukraine Ordinance) to or for use in the Russian Federation are prohibited. The list of goods is extensive and include certain chemicals, wood, textiles, construction material, metals, machinery, etc.).

The providing of **services of any kind**, including financial services, technical assistance, brokering services, or otherwise the providing of financial means for such goods or in relation to the sale, supply, export, transit, transport, manufacturing or maintenance of such goods are also prohibited.

However, these prohibitions do not apply in relation to contracts entered into

before **28 April 2022** and performed until **29 July 2022**.

5. Import ban regarding solid fossil fuels

The purchase, import, transit and transport of **coal and other solid fossil fuels** listed in Annex 22 to the Ukraine Ordinance, originating in or exported from the Russian Federation are prohibited. Furthermore, the Ukraine Ordinance foresees a corresponding prohibition to provide **services of any kind** (including financial services, technical assistance, brokering services, or otherwise the providing of financial means).

However, according to the text of the Ukraine Ordinance, the latter prohibition is expressed to apply in relation to coal and other solid fossil fuels originating in or exported from the Russian Federation in general rather than to such coal and other solid fossil fuels listed in Annex 22 to the Ukraine Ordinance. This may be an oversight which may be corrected in the future by the Swiss Federal Council in order to have this prohibition fully aligned with the corresponding one in the EU.

However, these prohibitions do not apply in relation to contracts entered into before **28 April 2022** and performed until **29 August 2022**.

6. Import ban regarding goods which generate significant revenues for the Russian Federation

The purchase, import, transit and transport of certain **economically important goods** (i.e. goods which generate significant revenues) for the Russian Federation (as listed in Annex 20 to the Ukraine Ordinance, such as timber, cement, seafood, caviar) originating therein or exported therefrom, are prohibited. So too are the providing of **services of any kind**, including technical assistance, bro-

kering services, or otherwise the providing of financial means for such goods or in relation to the purchase, import, transit, transport, supply, manufacturing, maintenance or use of such goods.

However, these prohibitions do not apply in relation to contracts entered into before **28 April 2022** and performed until **29 July 2022**.

Financial restrictions

1. Asset freeze

The Ukraine Ordinance now foresees that SECO may **authorise the release** of certain frozen assets or economic resources to individuals, corporations or entities listed in Annex 8 to the Ukraine Ordinance in order to allow the **sale or transfer of ownership until 28 October 2022** to a corporation or other entity established in Switzerland or in a member State of the European Economic Area, provided (i) such ownership **is directly or indirectly with** an individual, corporation or other entity listed in Annex 8 to the Ukraine Ordinance **and** (ii) the proceeds of the sale or transfer **remain frozen**.

Since 25 March 2022, SECO can exceptionally authorise the **release of certain assets and economic resources** belonging to three specifically designated entities listed in Annex 8 to the Ukraine Ordinance (i.e. Bank Rossiya, PROMSVYAZ-BANK and VEB.RF), or otherwise the providing of certain assets or economic resources to these entities, once SECO has established that such assets or economic resources are necessary for the **termination by 24 August 2022** at the latest, of operations, contracts or other agreements, including correspondent banking relations with those entities **before 23 February 2022**.

Since 27 April 2022, SECO can further exceptionally authorise the **release of certain assets and economic resources** belonging to four specifically designated entities listed in Annex 8 to the Ukraine

Ordinance (i.e. Otkritie FC Bank, Novikombank, Sovcombank and VTB Bank), or otherwise the providing of certain assets or economic resources to these entities, once SECO has established that such assets or economic resources are necessary for the **termination by 28 October 2022** at the latest, of operations, contracts or other agreements, including correspondent banking relations concluded with those entities **before 27 April 2022**.

2. Clarifications regarding trading venues

Under the amendments made to the Ukraine Ordinance on 4 March 2022, it was foreseen that as of 12 April 2022, it was 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 and "**owned (more than 50%) by the Russian State**".

The Ukraine Ordinance has been further amended to clarify that such prohibition applies to (i) any trading venue (i.e. whether or not registered or recognised in Switzerland, whereas under the corresponding prohibition of the EU, the relevant trading venue shall be "registered or recognised" in the EU) and (ii) in relation to transferable securities of banks, corporations and any other entities located in the Russian Federation and "**controlled and with over 50% public ownership**".

3. Expanded prohibitions to accept deposits and crypto-assets and SECO's updated guidelines

The prohibition under the Ukraine Ordinance to accept certain deposits (of more than CHF 100,000 from Russian citizens or residents or from banks, corporations or other entities established in the Russian Federation (a **Russian Account Holder**)) has been expanded as (i) said

prohibition is now expressed to apply broadly "**to any persons or entities accepting deposits and granting loans on a professional basis**" (i.e. including all banks in accordance with the Banking Act and all institutions with a license in accordance with Article 1b of the Banking Act, thus excluding for instance insurance companies) and (ii) it is now further prohibited for entities and corporations providing professional services crypto-asset wallet, account or custody services to provide such services to Russian citizens or individuals residing in the Russian Federation, or legal persons, corporations or entities established in the Russian Federation, if the total value of crypto-assets of the individual or legal person, corporation or entity per wallet, account or custody provider exceeds CHF 10,000.

On 14 April 2022, SECO has updated its guidelines (originally issued on 16 March 2022) regarding the interpretation of the Ukraine Ordinance with respect to the prohibition to accept certain deposits and the related reporting obligations (the **Updated Guidelines**) (an overview of such guidelines can be found in our previous [Newsletter No. 166](#) released on 18 March 2022).

According to the Updated Guidelines:

- whilst previously referring to dividend payments as an exception to the prohibition to accept deposit in excess of CHF 100,000 (i.e. dividend payments can be accepted even if they exceed CHF 100,000), the Updated Guidelines now refers to the broader notion "**corporate actions**" (which includes dividends, coupons, etc.). However, SECO has now specified that such exception in relation to said corporate actions only applies if the latter stem from securities which were deposited/booked on the same business relationship (i.e. that were held in custody by the same bank and in the same customer relation to which the

dividend is to be credited);

- with respect to accounts held by Russian Account Holders jointly with a Swiss citizen or resident or a citizen or resident of a member State of the European Economic Area, such joint accounts **do not fall within the scope** of the prohibition to **accept deposits and crypto-assets**. Conversely, when held jointly with a citizen or resident of a State other than Switzerland or a member State of the European Economic Area, then such joint accounts **are subject** to the prohibitions to accept deposits and crypto-assets;
- accounts which are not held by a Russian Account Holder but managed by a Russian person **are not subject** to the prohibitions to accept deposits and crypto-assets;
- trusts whose settlor or beneficiary is Russian **do not fall within the scope** of the prohibition to accept deposits and crypto-assets;
- accounts of companies established outside the Russian Federation, in which a Russian person holds shares without being the beneficial owner **are not subject** to the prohibitions to accept deposits and crypto-assets; and
- accounts held by a corporation or other entity whose beneficial owner is Russian **are subject** to the prohibitions to accept deposits and crypto-assets.

As per the latter, by claiming that **non-Russian legal entities** are subject to the prohibitions to accept deposits and crypto-assets because they are beneficially owned by a Russian person, the SECO goes beyond the wording of Article 20 of the Ukraine Ordinance, which only refers to "Russian citizens or residents and **banks, corporations or other entities established in the Russian Federation**". Indeed, pursuant to the Ukraine

Ordinance, an account held by a UK entity, beneficially owned by a Russian citizen residing in England would not be subject to the prohibitions to accept deposits and crypto-assets. However, pursuant to the Updated Guidelines, SECO is of the opinion that such accounts are subject to the prohibitions to accept deposits and crypto-assets which may contradict the guideline regarding trusts for which SECO indicates that whether the settlor or beneficiary is Russian is irrelevant and the prohibitions would not apply. In that respect, since the Updated Guidelines the Ukraine Ordinance now further includes prohibitions in relation to trusts (see **6. Prohibitions related to trusts below**), it can be expected that SECO updates its guidelines accordingly to either align the position on trust with that on corporation or other entity beneficially owned by Russian nationals or reverse its position so the latter (i.e. accounts held by a corporation or other entity whose beneficial owner is Russian would not be subject to the prohibitions to accept deposits and crypto-assets).

Not only is the legitimacy of this interpretation by SECO questionable but its validity as well since SECO does not have the authority to extend the scope of application of the Ukraine Ordinance (although the latter grants SECO the authority to authorise derogations to certain prohibitions thereunder). Further, at the date of this Newsletter, no corresponding EU guideline is available in relation to this question.

4. Prohibition of transactions with certain state-owned enterprises

Since **25 March 2022**, 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 Ukraine 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, a member State of the European Economic Area and, **since 27 April 2022**, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia (ii) certain transactions related to energy projects outside the Russian Federation and (iii) transactions serving humanitarian purposes.

5. Prohibitions related to support of public entities.

Subject to specific exceptions, it is **prohibited** to provide direct or indirect **support**, including financing and financial assistance or any other benefit **under a "Swiss national programme"** (without more details, including with respect to potential Cantonal programme, being provided in the Ukraine Ordinance), to any legal person, corporation or entity established in the Russian Federation with over 50 % public ownership or public control. However, this prohibition does not apply in relation to contracts entered into before **28 April 2022** and performed until **29 October 2022**.

6. Prohibitions related to trusts

It is **prohibited to register, provide a registered office, business or administrative address as well as management services** to, a trust or any similar legal arrangement having as a settlor or a beneficiary (a) a Russian national or resident, (b) a legal person, corporation or entity established in the Russian Federation, (c) a legal person, corporation or entity whose directly or indirectly owned for more than 50% by an individual or a legal person, corporation or entity to under (a) or (b) above, (d) a legal person, corporation or entity controlled by an individual or a legal person, corporation

or entity referred to in under (a), (b) or (c) above or, (e) an individual or legal person, corporation or entity acting on behalf or at the direction of an individual or a legal person, corporation or entity referred to under (a), (b), (c) or (d) above.

As of **29 May 2022**, it will be **prohibited to act** as, or arrange for another person to act as, a **trustee, nominee shareholder, director, secretary or a similar position**, for a trust or similar legal arrangement as referred to above.

However, these prohibitions do not apply in relation to transactions which are necessary to terminate by **29 May 2022** contracts entered into before **28 April 2022** and which would otherwise fall within the scope of the Ukraine Ordinance.

Furthermore, the above does not apply when the settlor or beneficiary is a Swiss citizen or resident or a citizen or resident of a member State of the European Economic Area.

7. Air traffic

Subject to certain exceptions, it is **prohibited** for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian individual or legal person, corporation or entity, to **land in, take off from or overfly** the territory of Switzerland.

Amendments to the Belarus Ordinance

On 27 April 2022, the Swiss Federal Council also adopted an amendment to the "Ordinance on measures against Belarus" (*Verordnung über Massnahmen gegenüber Belarus / Ordonnance instituant des mesures à l'encontre du Bélarus*) (the **Belarus Ordinance**). The bans on the export of banknotes and the sale of securities to Belarusian nationals or residents

or entities are extended to all official currencies of EU Member States. Until now, only securities and banknotes in Swiss francs and in euros were affected.

In addition to the previous prohibitions related to the issuance of certain financial instruments, it is, since **12 April 2022**, also prohibited to register and provide services on securities trading venues to any bank, corporation or entity established in Belarus and owned (more than 50%) by the State of Belarus.

Conclusion

Considering the extensive scope of the sanctions under the Ukraine and Belarus Ordinances 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.

An overview of the scope of the Ukraine Ordinance can be found in our previous Newsletters [No. 164](#), [No. 166](#) and [No. 167](#) on the topic, released on 11 March 2022, 18 March 2022 and 1 April 2022, respectively and an overview of the Belarus Ordinance can be found in our previous Newsletter [No. 166](#) released on 18 March 2022.

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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