

Newsletter No.

177

Swiss sanctions in relation to the situation in Ukraine

On 3 August 2022, the Swiss Federal Council took the decision to adopt the latest EU sanctions directed against the Russian Federation. Amendments to the corresponding ordinance have been adopted by the Swiss Federal Council on (i) 3 August 2022 at 6pm, with primarily a ban on buying, importing or transporting gold and gold compounds from the Russian Federation and (ii) 31 August 2022 at 6pm, with respect to the technical maintenance and alignment measures, which mainly consist of adaptations of existing measures, such as the ban on accepting deposits.

walderwyss attorneys at law

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

On **3 August 2022**, the Swiss Federal Council took the decision to adopt the latest EU sanctions directed against the Russian Federation on **21 July 2022**, as implemented in 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**) (i) on **3 August 2022**, with primarily a ban on buying, importing or transporting **gold and gold compounds** from the Russian Federation, the resumption of which was deemed urgent from a temporal or material perspective and (ii) on **31 August 2022 at 6pm** with respect to the **technical maintenance and alignment measures** (intended to tighten existing economic sanctions, perfect their implementation and strengthen their effectiveness), which mainly consist of adaptations of existing measures, such as the ban on accepting deposits.

In addition, following an in-depth analysis by the competent services and as requested by the Swiss Federal Council on **29 June 2022**, the EU prohibitions on awarding **public contracts** to Russian nationals or to entities or bodies established in the Russian Federation are now included. Russian nationals residing in Switzerland, as well as Swiss companies owned by Russian persons, are exempt from this ban.

Also, the **list of sanctioned individuals and entities** as set forth in Annex 8 to the Ukraine Ordinance has been further expanded by the Federal Department of Economic Affairs, Education and Research (EAER) on **17 August 2022**, resulting in the sanctioning of Viktor Yanukovich, President of Ukraine from 2010 until 2014, and his son, Oleksandr Yanukovich.

Finally, on **31 August 2022**, the State Secretariat for Economic Affairs (SECO) updated its 16 March 2022 guidelines, last updated on 5 July 2022.

Amendments to the Ukraine Ordinance

Commercial restrictions

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

Since **27 April 2022**, 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, 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, transport, manufacturing or maintenance of such goods, are prohibited.

Since **31 August 2022**, SECO can grant **derogations if necessary** (i) for **medical or pharmaceutical** purposes and for **final use which is non-military**, (ii) for **humanitarian or evacuation** purposes or (iii) for the **exclusive use by Switzerland** to fulfil its maintenance obligations in areas which are subject to **long term lease agreements** between Switzerland and the Russian Federation.

Financial restrictions

1. Asset freeze

The scope of the provision related to the freezing of assets and economic resources has been extended. The freeze, which already applied to (i) individuals, corporations or any other entities listed in Annex 8 to the Ukraine Ordinance (the **Sanctioned Parties**), now also

applies to (ii) individuals, corporations and entities **acting on behalf of or upon instructions of** Sanctioned Parties and to (iii) corporations and entities **owned or controlled by** individuals, corporations or entities referred to under (i) or (ii) above.

2. Prohibition to accept deposits

In addition to the prohibition 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, the Ukraine Ordinance now provides that it is prohibited to accept such deposits from any bank, corporation or entity established **outside Switzerland and the European Economic Area** and which is **majority owned** (directly or indirectly) by **Russian citizens or individuals**

residing in the Russian Federation.

It must be noted that such addition **does not apply** in relation to crypto-asset wallet, accounting or custody services so that the prohibition to provide such services still apply to services to (i) Russian citizens or (ii) individuals residing in the Russian Federation, or (iii) 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.

3. Prohibitions related to public procurements

It is **prohibited** to **award** public contracts falling within the scope of Switzerland's international obligations regarding public procurement to **(i)** Russian citizens or individuals residing in the Russian Federation, **(ii)** any legal person, corporation or entity established in the Russian Federation, **(iii)** any legal person, corporation or entity majority owned (directly or indirectly) by an individual, a legal person, corporation or entity referred to in (i) and (ii), and **(iv)** any legal person, corporation or entity acting on behalf or upon instructions of an individual, a legal person, corporation or entity referred to in (i), (ii) or (iii) or **conclude** such contracts previously awarded to such individual, legal person, corporation or entity.

Any such **existing** public contracts must be **terminated by 28 February 2023** at the latest.

Furthermore, the above applies to public contracts in which, **subcontractors and suppliers** qualifying as individual, legal person, corporation or entity referred to in (i) to (iv) above, **account for more than 10% of the contract value**.

These prohibitions **do not apply** to Russian citizens residing in Switzerland and to legal persons, corporations and entities incorporated in Switzerland before **31 August 2022** and which, **before that**

date, were majority owned (directly or indirectly) by an individual, legal person, corporation or entity referred to in (i) to (iv) above.

SECO can grant derogations in various cases, including in relation to operation of nuclear power plants and the disposal of nuclear waste, space programmes and the supply of natural gas, oil and certain metals.

SECO's updated guidelines

On **31 August 2022**, SECO has updated its guidelines (originally issued on 16 March 2022 and updated on 14 April 2022 and 5 July 2022) (the **Guidelines**) regarding the interpretation of the Ukraine Ordinance with respect to (i) the prohibition to accept certain deposits and crypto assets and the related reporting obligations (**Articles 20 and 21**), (ii) the prohibition to sell certain securities (**Article 23**) and (iii) prohibitions related to trusts (**Article 28d**) (the **Updated Guidelines**) (an overview of such guidelines can be found in our previous Newsletters No. 166 (see [here](#)), No. 168 (see [here](#)) and No. 174 (see [here](#)). The changes to the Updated Guidelines can be outlined as follows based on **specific questions** which have been submitted to and reviewed by SECO.

1. after **originally stating** that accounts held by entities located **outside the Russian Federation** and whose **beneficial owner is a Russian individual were subject to Article 20** (which we highlighted to be inconsistent with both the Ukraine Ordinance and the interpretation of the similar sanctions at the level of the EU (see our Newsletter No. 168 [here](#)), SECO has **revised its interpretation** in its Guidelines (as of **5 July 2022**) to confirm that these were **actually not subject to Article 20** (see our Newsletter No. 174 [here](#)). However, these guidelines **have been deleted** from the latest version of the Updated Guidelines;

2. aligning the interpretation of Article 20 with the latest amendments to the Ukraine Ordinance, the **Updated Guidelines** now foresee that, unlike what was foreseen in the Guidelines since 14 April 2022 (see our Newsletter No. 168 [here](#)), accounts of companies **established outside Switzerland and the European Economic Area** and which is **majority owned** (directly or indirectly) by a **Russian citizen** or an individual **residing in the Russian Federation are subject to Article 20**; the Updated Guidelines further refer to the general exemptions of the Ukraine Ordinance, i.e. that Article 20 does not apply to companies established outside Switzerland and the European Economic Area and which is majority owned (directly or indirectly) by a Russian citizen or resident if **the latter** also holds the **Swiss nationality** or the **nationality of a member State of the European Economic Area** or a **residency permit** in Switzerland or a member State of the European Economic Area;
3. similarly, whereas the **Guidelines** used to indicate that **funds located outside the Russian Federation**, in which a Russian individual or entity holds a participation as investor **were not subject to Article 20**, pursuant to the latest amendments to the Ukraine Ordinance, the **Updated Guidelines** now provide that funds located outside Switzerland and the **European Economic Area**, in which a Russian individual or an individual residing in the Russian Federation holds more than 50% (or an equivalent participation as an investor) **are subject to Article 20**; and
4. as of 31 August 2022, deposits which are necessary for the non-prohibited cross-border trade in goods and services between Switzerland and the Russian Federation, between Switzerland and the **European Economic Area** or between the **Euro-**

pean Economic Area and the Russian Federation fall under the prohibitions of Article 20 although SECO can grant **derogations** in certain cases.

The Updated Guidelines now further clarify that, like citizens of and residents in Monaco, citizens of and residents in **Andorra are not subject** to the prohibitions of Articles 20, 23(2) and 28d, unlike citizens of and residents in the United Kingdom.

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, 167, 168, 173 and 174 on the topic, released on 11 March 2022 (see [here](#)), 18 March 2022 (see [here](#)), 1 April 2022 (see [here](#)), 2 May 2022 (see [here](#)), 1 July 2022 (see [here](#)) and 11 August 2022 (see [here](#)), respectively, and an overview of the scope of the Belarus Ordinance can be found in our previous Newsletters No. 166 (see [here](#)), No. 168 (see [here](#)) and No. 173 (see [here](#)), released on 18 March 2022, 2 May 2022 and 1 July 2022, respectively.

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.

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.



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