

Newsletter No.

180

Swiss sanctions in relation to the situation in Ukraine

On 23 November 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 and came into force on 23 November 2022 at 6pm.

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

On **23 November 2022**, the Swiss Federal Council took the decision to adopt the latest EU sanctions directed against the Russian Federation on **6 October 2022**, as implemented in the amended "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**), which came into force on **23 November at 6pm**.

The new measures include (i) a legal basis for the introduction of **oil price caps for Russian crude oil and petroleum products**, as well as (ii) **restrictions on other iron and steel products, aerospace goods and goods of economic importance to the Russian Federation**. Furthermore, the new measures include **bans on the provision of further services (IT, engineering, architecture, legal services)** to the Russian government and to Russian companies, as well as on holding seats on the boards of certain Russian state-owned companies. However, whilst implementing the latest EU sanctions, Switzerland ensures that **the exercise of the rights of defence and access to judicial, administrative and arbitral proceedings in Switzerland are preserved and that the rule of law is fully guaranteed**. This was the Swiss Federal Council's condition for adopting these new measures.

In addition, the Swiss Federal Council has now explicitly included in the ordinance **an arms embargo against the Russian Federation**, which for reasons of Swiss neutrality will also be **partially extended to Ukraine**. Up until now, the arms embargo has been implemented in Switzerland largely on the basis of existing war material and goods control legislation. In adopting the embargo on military equipment, it is now explicitly included in the ordinance in connection with the situation in Ukraine.

In order to contribute to the fight against the global food and energy crises, the Swiss Federal Council decided to amend the Ordinance to allow the **purchase of certain fertilisers**, provided the goods are **destined for a third country**. The decision is based on Switzerland's particular importance regarding the **global trade in fertilisers**.

Also, the **list of sanctioned individuals and entities** as set forth in Annex 8 to the Ordinance has been further expanded by the Federal Department of Economic Affairs, Education and Research (**EAER**) on **12 October 2022**, resulting in the sanctioning of some 30 additional individuals and entities, including the Russian proxy authorities in occupied territories of Donetsk, Luhansk, Kherson, and Zaporizhzhia.

Finally, on **23 November 2022**, the State Secretariat for Economic Affairs (**SECO**) updated its 16 March 2022 guidelines, last updated on 31 August 2022, regarding the interpretation of articles 12, 14a, 14c, 15, 20, 21, 23, 28b and 28d of the Ordinance.

Amendments to the Ordinance

Commercial restrictions

1. Import and export bans on military goods

Whereas the former version of the Ordinance contained separate bans on (i) import of weapons, explosives and similar goods and (ii) export of certain specific military goods as listed in Annex 3 to the Swiss Goods Controls Ordinance, the Ordinance now provides for general combined bans on:

- the sale, supply, export and transit of **military goods of any kind**, including weapons, ammunitions, vehicles, military and paramilitary equipment and accessories or components **to the Russian Federation or Ukraine** or otherwise **for use in those countries**;
- the purchase, acquisition, import and transit of such goods **from the Russian Federation**; and
- 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 the granting of insurance or reinsurance or brokering services in relation to such products in relation to the purchase, sale, acquisition, supply, import, export, transit, manufacturing or use of the goods referred to above.

The Ordinance contains certain new exemptions, including in relation to certain protective goods temporarily exported by members of the UN, EU or the Swiss Confederation personnel or members of the media and humanitarian agencies, provided however that such goods are for their personal use.

2. New derogation in relation to the aviation and space sector

SECO may authorise the sale, delivery, export and transit (directly or indirectly) of certain goods listed in Annex 3 to the

Ordinance, as well as related technical assistance, brokering services, financing or financial assistance, with respect to these goods, provided that **they are necessary for the production of titanium goods required in the aeronautic industry, for which no alternative supply is available.**

3. New derogation in relation to the 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 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.

SECO can grant **derogations if necessary** since 31 August 2022 (i) for **medical or pharmaceutical** purposes and for **non-military final use**, (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 and (iv) since **23 November 2022**, for the establishment, operation, maintenance, fuel supply and retreatment and safety of **civil nuclear capabilities**, and the continuation of design, construction and commissioning required for the completion of **civil nuclear facilities**, the supply of precursor material for the **production of medical radioisotopes** and similar medical applications, or critical technology for **environmental radiation monitoring**, as well as for **civil nuclear cooperation**, in particular in the field of research and development.

4. Ban related to the transport of crude oil and certain petroleum products

Under the former version of the Ordinance, the providing of financial services, technical assistance, brokering services, or otherwise the providing of financial means in connection with the transport outside Switzerland or the EU of crude oil and petroleum products listed in Annex 24 to the Ordinance originating in or exported from the Russian Federation were prohibited, unless these goods were (i) only **transiting through the Russian Federation** and (ii) that their **owners were non-Russian**. These prohibitions did not apply to operations governed by contracts entered into before **30 June 2022** and performed until **5 December 2022**.

Under the current version of the Ordinance, in addition to the **prohibition to provide financial services**, technical assistance, brokering services, or otherwise to provide financial means in connection with the **transport outside Switzerland and the European Economic Area** of crude oil and petroleum products listed in Annex 24 to the Ordinance originating in or exported from the Russian Federation, the **transport (excluding provision of pilot services necessary for reasons of maritime safety) out of Switzerland and the European Economic Area** of such crude oil and petroleum products is also prohibited, including through ship-to-ship transfers.

However, those prohibitions **do not apply to:**

- goods that are **only transiting through** the Russian Federation and whose **owner is non-Russian**;
- goods whose purchase price **does not exceed the price laid down in Annex 28 to the Ordinance**; and
- goods listed in **Annex 29** to the Ordinance for the timeframes set forth therein.

Furthermore, the providing of the above-mentioned services to ships having transported such crude oil and petroleum products **whose purchase price exceeded the price laid down in Annex 28 to the Ordinance on the date of conclusion of that contract is prohibited.**

5. Exceptions to iron and steel goods import ban

Since **25 March 2022**, 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.

Since **23 November 2022**, those prohibitions do not apply to either **(i)** the purchase of goods **within the import volume quotas** established by the EU, or **(ii)** the import, transit and transport of such goods **in or through Switzerland.**

Furthermore, SECO can authorise derogations to the above-mentioned prohibitions if this is necessary for the establishment, operation, maintenance, fuel supply and retreatment and safety of **civil nuclear capabilities**, and the continuation of design, construction and commissioning required for the completion of **civil nuclear facilities**, the supply of precursor material for the **production of medical radioisotopes** and similar medical applications, or critical technology for **environmental radiation monitoring**, as well as for **civil nuclear cooperation**, in particular in the field of research and development.

6. New exemptions to the import ban regarding goods which generate significant revenues for the Russian Federation

Since **27 April 2022**, 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 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, brokering 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.

On **23 November 2022**, the list of goods set forth in Annex 20 to the Ordinance has been substantially expanded. Furthermore, since that date, certain exemptions to the above-mentioned prohibitions have been included, amongst others, with respect to goods listed in Annex 21 to the Ordinance which are **within the import volume quotas** established by the EU or otherwise destined to a **State outside Switzerland and the EU.**

Furthermore, SECO can authorise derogations to the above-mentioned prohibitions if this is necessary for the establishment, operation, maintenance, fuel supply and retreatment and safety of **civil nuclear capabilities**, and the continuation of design, construction and commissioning required for the completion of **civil nuclear facilities**, the supply of precursor material for the **production of medical radioisotopes** and similar medical applications, or critical technology for **environmental radiation monitoring**, as well as for **civil nuclear cooperation**, in particular in the field of research and development.

Financial restrictions

1. New exceptions to asset freeze

SECO can **exceptionally authorise the release** of certain frozen assets or economic resources belonging to **PJSC KAMAZ** and **National Settlement Depository (NSD)**, provided that this is necessary to terminate by **31 December 2022 and 7 January 2023**,

respectively, **certain transactions as specified in the Ordinance.**

2. Expanded prohibitions to accept deposits and crypto-assets

Since **23 November 2022**, it is 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, **regardless of the total value of crypto-assets** at stake, whereas such prohibitions used to only apply when the total value amounted to CHF 10,000.

3. Ban on the provision of architectural and engineering services, legal advisory services and IT consultancy services

Since **29 June 2022**, it is prohibited to, directly or indirectly, provide **accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services** to the **Government of the Russian Federation** or to **corporations, entities or other bodies established in the Russian Federation.**

Since **23 November 2022**, the list of prohibited services includes **architectural and engineering services, legal advisory services and IT consultancy services**, except when such services are required to terminate by **4 February 2023** agreements which are subject to these prohibitions and were entered into before **24 November 2022.**

The Ordinance contains numerous exceptions to these prohibitions, including, since **23 November 2022**:

- with respect to **accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services, architectural and**

engineering services, legal advisory services and IT consultancy services, when such services are necessary to ensure access to judicial, administrative or arbitration proceedings **in Switzerland, a member State of the European Economic Area or the United Kingdom**, or for the recognition or enforcement of a judgment or arbitration award given in **Switzerland, a member State of the European Economic Area or the United Kingdom**;

– with respect to **architectural and engineering services, legal advisory services and IT consultancy services**, when such services are required (i) for **health emergencies**, for the prevention or mitigation (on an urgent basis) of an event likely to have serious and significant effects on human health and safety or on the environment, or in response to natural disasters and (ii) for **software updates for non-military purposes** and for a non-military end-user.

Furthermore, the Ordinance foresees the possibility for SECO to authorise numerous **derogations, including, amongst others**, since 23 November 2022, (i) in order to guarantee the **energy supply of Switzerland or a member State of the European Economic Area** in the event of a serious, declared or imminent shortage, (ii) for purposes of the establishment, operation, maintenance, fuel supply and retreatment and safety of **civil nuclear capabilities**, and the continuation of design, construction and commissioning required for the completion of **civil nuclear facilities**, the supply of precursor material for the **production of medical radioisotopes** and similar medical applications, or critical technology for **environmental radiation monitoring**, as well as for **civil nuclear cooperation**, in particular in the field of research and development and (iii) in order to ensure the **operation of infrastructure**, hardware and software that are **critical to human health and safety** or to the safety of the environment.

4. Expanded derogations of certain prohibitions for the benefit of citizens of the United Kingdom

With respect to the prohibitions (i) to **accept deposits and crypto-assets**, (ii) for central securities depositories to provide certain services, (iii) to **sell certain securities**, (iv) related to **trusts** and (v) to provide certain accounting, auditing and other consulting **services, the derogations** for the benefit of Swiss and EU citizens and residents have been expanded to include **citizens and residents of the United Kingdom**.

5. Transitory provisions and amended Annexes

The Ordinance contains **specific transitory provisions** related to existing and new measures and, in addition to those referred to above, **various other Annexes have been further amended**, including Annex 3 (*Goods related to the aviation and space sector*), Annex 6 (*Listed territories related to general bans on import, export and financing*), which includes the territories of **Kherson and Zaporizhzhia** which are not under the control of the Ukrainian government, Annex 17 (*Iron and steel goods*).

SECO's updated guidelines

On **23 November 2022**, SECO has updated its guidelines (originally issued on 16 March 2022 and last updated on 31 August 2022) (the **Guidelines**) regarding the interpretation of the Ordinance with respect to (i) the prohibitions related to coal, fossil fuels, iron and steel goods and other economically important goods (**Articles 12, 14a and 14c**), (ii) asset freeze (**Article 15**), (iii) the prohibitions related to the energy sector (**Article 28b**) and (iv) the 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](#)), No. 174 (see [here](#)) and No. 177 (see [here](#)). The latest changes to the Updated Guidelines can be outlined as follows based on

specific questions which have been submitted to and reviewed by SECO:

1. Prohibitions related to coal, fossil fuels, iron and steel goods and other economically important goods (Articles 12, 14a and 14c)

SECO confirms that the prohibitions under Articles 12, 14a and 14c of the Ordinance apply **regardless of the destination of the goods**. Furthermore, whereas the prohibitions under Articles 12, 14a and 14c of the Ordinance apply with respect to **the transport through Switzerland of the goods listed in Annexes 17, 20 and 22 to the Ordinance, the transport by a Swiss transporter is allowed** as well as the **providing of financial services, brokering services and insurance services in relation to such transport**, provided that the **goods do not transit through Switzerland**.

2. Asset freeze (Article 15)

As to whether income from **securities issued by companies or organisations sanctioned** under Articles 15 of the Ordinance **may be accepted**, SECO advises that the funds of a sanctioned issuer are in principle subject to the asset freeze provided for in Article 15 para. 1 of the Ordinance – accordingly, Swiss financial institutions **must in principle block** such transactions upon receipt and report them to SECO. SECO may then authorise the release of the funds and their booking on any account in Switzerland in accordance with Article 15 para. 1 of the Ordinance. Due to the high volume of these transactions, a lighter procedure is applied with regard to the crediting to the accounts of non-sanctioned customers of the income from securities issued by sanctioned companies or organisations within the meaning of Article 15 of the Ordinance. Recurring mandatory transactions in securities issued by companies or organisations sanctioned under Article 15 of the Ordinance – including corporate actions in the form of dividends, exchange offers in connection with

depository receipts, etc. share splits, interest on securities lending, interest on bonds and proceeds from bonds by dissolution/maturity – are not subject to a prior approval requirement under Article 15 para. 5 of the Ordinance.

As to assets held by the National Settlement Depository (NSD), SECO clarifies that whereas assets belonging to, owned by, held or controlled by the NSD must be blocked, assets – including securities – that **are only held in custody via NSDs are not affected** by the freezing of assets pursuant to Article 15 para. 1 of the Ordinance. In addition, SECO notes that the NSD is subject to the prohibition on making funds available pursuant to Article 15 para. 2 of the Ordinance. Therefore, all activities that directly or indirectly involve the payment of fees to NSD or the provision of other funds or economic resources to or for the benefit of the NSD are prohibited. In that respect, although the Updated Guidelines are released on the same date as the amended Ordinance, the Updated Guidelines do not make any reference to the newly implemented exemptions related to permitted transactions with NSD (see above Financial restrictions).

When asked whether a bank in Switzerland can disclose the identity of end-investors to a Russian custodian in order to obtain credit of dividends from Russian shares or depository receipts to an omnibus or individual account in Russia, SECO reminded that the **disclosure of client data is not covered by the Ordinance and is subject to compliance with other regulations (in particular banking secrecy)**. Accordingly, a Swiss bank may assist its clients in opening such omnibus or individual accounts with Russian banks, provided that it is not a bank subject to Article 15 or Article 24a of the Ordinance. Also, incoming dividend payments from issuers subject to Article 15 or Article 24a of the Ordinance should only be blocked or rejected if the payment is made directly by the sanctioned issuer.

Payments from omnibus or individual accounts with non-sanctioned banks in the Russian Federation may be accepted.

3. Prohibitions related to the energy sector (Article 28b)

Article 28b of the Ordinance prohibits the **acquisition of new participations** or extension of existing participations, as well as the provision of or participation in loans, credits or other financial resources, including equity, to or for the purpose of financing legal persons, undertakings or entities organised or registered under the laws of a State other than Switzerland and the European Economic Area and operating in the energy sector in the Russian Federation.

The prohibition therefore applies to both **newly created** and **existing foreign equity participations**.

4. Prohibitions related to trusts (Article 28d)

Foundations within the meaning of Article 80 et seq. of the Swiss Civil Code – or equivalent foreign provisions – **are regarded as “similar legal forms”** within the meaning of Article 28d of the Ordinance. Foundations which pursue **charitable objectives** and are **subject to supervision**, as well as religious foundations with registered office in Switzerland or a member State of the European Economic Area, **are excluded** from the scope.

The Updated Guidelines further clarify that, as is the case for citizens and residents of Monaco and Andorra, citizens and residents of the **United Kingdom are not subject** to the prohibitions of Articles 20, 23(2) and 28d of the Ordinance.

Switzerland adopts sanctions on the supply of Iranian drones to the Russian Federation

On 20 October 2022, the EU imposed sanctions on three Iranian individuals and

one Iranian entity alleged to have been involved in the development and **delivery to the Russian Federation of drones used in Ukraine**. On 2 November 2022, the EAER, has decided together with the Federal Department of Foreign Affairs (FDFA) to **adopt these EU sanctions**.

Conclusion

Considering the extensive scope of the sanctions under the 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 Ordinance can be found in our previous Newsletters No. 164, No. 166, 167, 168, 173, 174 and 177 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](#)), 11 August 2022 (see [here](#)) and 2 September 2022 (see [here](#)), respectively. An overview of the scope of the “Ordinance on measures against Belarus” (Verordnung über Massnahmen gegenüber Belarus / Ordonnance instituant des mesures à l'encontre du Bélarus) (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.

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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