

Newsletter No.

184

Earthquakes, humanitarian aid and Swiss sanctions in relation to Syria

On 6 February 2023, devastating earthquakes hit southern Turkey and northern Syria. Whilst the Swiss-based humanitarian community is already responding both in the headquarters and on the ground, numerous questions are simultaneously being raised by the humanitarian community, inter alia regarding the extent and types of help that may be legally provided. This Newsletter aims to provide basic initial insight into chosen provisions of the Swiss sanctions ordinance applicable to Syria.

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Chosen provisions of the Swiss sanctions ordinance applicable to Syria

Following the earthquakes of 6 February 2023 in both Turkey and Syria, the humanitarian community in Switzerland is seeking to act in the most efficient way possible, whilst remaining compliant with any applicable Swiss sanction laws.

Pursuant to the [Swiss list of sanctioned countries](#), **Swiss sanctions exist on Syria but not on Turkey**. We shall thus focus this newsletter on the Swiss sanctions applicable to Syria.

The Swiss sanctions ordinance applicable to Syria is known as the [Ordonnance instituant des mesures à l'encontre de la Syrie/Verordnung über Massnahmen gegenüber Syrien/Ordinanza che istituisce provvedimenti nei confronti della Siria](#) (hereafter, the **Syria Ordinance** or **SO**). There is no official English version of this text.

The current Syria Ordinance has been in place since 8 June 2012 and its latest version dates from 28 September 2022.

The key provisions of the SO - that we believe may be of immediate relevance to the humanitarian community - are the following (freely translated from French to English), in their order of appearance:

- **Art. 2 Prohibition on providing military goods and equipment which might be used for internal repression** (incl. references to protective equipment for humanitarian purposes);
- **Art. 3 Prohibitions regarding crude oil and petroleum products;**
- **Art. 4a Prohibitions regarding jet fuel and fuel additives;**
- **Art. 5 Prohibitions regarding electricity production;**
- **Art. 10 Asset freeze;**
- **Art. 15 Prohibitions regarding air traffic; and**
- **Art. 16 Prohibitions to settle certain claims.**

Other provisions of the SO may naturally apply to specific situations.

Although the titles above may seem discouraging, almost all provisions cited above include either (a) possible **exceptions** and/or (b) possibilities to request a **derogation from the State Secretariat for Economic Affairs (SECO), for humanitarian purposes**.

Hereunder we will briefly discuss each provision, one by one.



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Chosen provisions of the Swiss sanctions ordinance applicable to Syria

Commercial restrictions

- **Art. 2 Prohibition on providing military goods and equipment which might be used for internal repression** (incl. references to protective equipment for humanitarian purposes)

Art. 2 paras. 1 and 2bis SO inter alia **prohibit a wide range of activities** such as the acquisition, sale, supply, import and export, and transit of all sorts of **military goods** going to, used in or coming from Syria, including weapons, ammunitions, military vehicles, military and paramilitary equipment and accessories.

Pursuant to Art. 2 para. 2 SO, the sale, supply, exportation or transit, to Syria or for use in Syria, of goods possibly used for **internal repression**, as listed under [Annex 1](#) of the SO, are prohibited.

A broad range of **services** relating to all of the above, including the rendering of financial services, providing financial means or brokering services, are also prohibited (Art. 2 para. 3 SO).

Pursuant to Art. 2 para. 4 let. b SO, a **SECO derogation** may be requested for **non-lethal military equipment** used for **humanitarian or protection purposes** or for UN, EU or Swiss Confederation programs for the creation of institutions or the **handling of crisis situations**.

Furthermore, pursuant to Art. 2 para. 5 SO, **exceptions** apply to the **temporary exportation of protective clothing**, including **bullet-proof vests and helmets**, by the personnel of the UN, the EU or the Swiss Confederation, representatives of the media and humanitarian personnel, for their **own personal use**.

- **Art. 3 Prohibitions regarding crude oil and petroleum products**

Art. 3 para. 1 SO inter alia prohibits importing or transporting certain **crude oil and petroleum products** (see [Annex 2 of the SO](#)) if such originate from or are exported from Syria. It is also prohibited to buy such crude oil and petroleum products if such are located in Syria or originate from Syria.

Any **direct or indirect financing or financial help**, to the activities mentioned above, is prohibited (Art. 3 para. 2 SO).

Pursuant to Art. 3 para. 3 let. b. no. 1 SO, an **exception** exists for the purchase and transport of petroleum products in view of supplying humanitarian aid or aid to the civilian population in Syria, specifically by **public bodies, companies or entities, receiving contributions from the Swiss Confederation for such purposes**.

A broader **SECO derogation** to the prohibitions of Art. 3 SO may also be requested in order to serve **humanitarian purposes** (Art. 3 para. 6 SO).

- **Art. 4a Prohibitions regarding jet fuel and fuel additives**

Art. 4a para. 1 SO prohibits the sale, supply, exportation or transit of certain **jet fuel and fuel additives** (see [Annex 10 of the SO](#)), if for Syrian individuals or entities or for use in Syria.

Services such as inter alia brokering, as well **direct or indirect financing or financial help**, to the activities mentioned above, are also prohibited (Art. 4a para. 2 SO).

Pursuant to Art. 4a para. 3, an **exception** to such prohibitions may apply to products found under Annex 10 (numbers 1 to 8), if they are used by non-Syrian civilian aircraft making a stop-over in Syria (let. a), or if used by Syrian air-transporters proceeding to **evacuations** (let. b).

A SECO derogation to the prohibitions of Art. 4a SO may be requested, for

products found under Annex 10 (numbers 1 to 8), in order to serve **humanitarian purposes** or proceed to **evacuations** (Art. 4a para. 4 SO).

- **Art. 5 Prohibitions regarding electricity production**

Art. 5 para. 1 SO prohibits the granting of any **loans or credits, the provision of any technical assistance or financial aid** for the construction of **new power plants** (*centrales visant la production d'électricité*), or to Syrian individuals or entities involved in the construction of new power plants.

It is also prohibited to acquire or increase any participation in such entities, or to take part in any joint-ventures with them (*coentreprises*) (Art. 5 para. 2 SO).

The sale, delivery, export or transit of [Annex 4 equipment and technology](#), to Syria, to be used in order to build new power plants is prohibited (Art. 5 para. 3 SO). It is inter alia prohibited to provide any **technical assistance or financial aid** related to the sale, delivery, exportation or transit of any such Annex 4 equipment or technology (Art. 5 para. 4 SO).

Pursuant to Art. 5 para. 5 let. b SO, a **SECO derogation** may be requested to the prohibitions above, for **humanitarian purposes**.

Asset Freezes and Prohibitions on Making Assets Available

- **Art. 10 Asset freeze**

Pursuant to Art. 10 para. 1 SO, all **assets and economic resources** belonging to or controlled by individuals, corporations and other entities listed in [Annex 7](#) (see last version of the table at the bottom of the linked page) are **subject to an asset freeze**.

Nevertheless, pursuant to Art. 10 para. 3 let. f SO, a **derogation may be requested from and "exceptionally" granted by SECO** for payments made from frozen

accounts, transfers of frozen assets and the release of certain frozen economic resources in order to serve **humanitarian purposes**.

Art. 10 para. 2 SO further provides that **no assets or economic resources shall be made available, directly or indirectly**, to or for the benefit of individuals, corporations and other entities listed in Annex 7.

Such prohibition however **does not apply to the purchase and transport of petroleum products** in view of supplying **humanitarian aid** or aid to the civilian population in Syria, by public bodies, companies or entities, receiving contributions from the Swiss Confederation for such purposes (Art. 10 para. 2 cum Art. 3 para. 3 let. b SO).

In addition to the exception above, a **SECO derogation** to the prohibitions of Art. 10 para. 2 SO may also be requested in view of **supplying humanitarian aid or aid to the civilian population** in Syria, by public bodies, companies or entities, receiving contributions from the Swiss Confederation for such purposes (Art. 10 para. 2bis SO).

Other Restrictions

- **Art. 15 Prohibitions regarding air traffic**

Pursuant to Art. 15 para. 1 SO, access to airports in Switzerland by **all flights operated by Syrian Arab Airlines** is **prohibited**.

In addition, all cargo flights operated by Syrian carriers are also prohibited, with an **exception** applicable to mixed passenger and cargo flights (Art. 15 para. 2 SO).

This provision provides for a further exception for **flights with humanitarian purposes** (Art. 15 para. 3 SO).

- **Art. 16 Prohibitions to settle certain claims**

Pursuant to Art. 16 SO, it is **prohibited to settle certain claims (e.g. contractual obligations)** based on an agreement, arrangement or for any matter, whose performance has been **prevented or impacted by restrictions** imposed under the Syria Ordinance.

This prohibition applies to claims owed to:

- the Syrian Government;
- individuals, corporations and other entities listed in Annex 7;
- individuals, corporations and other entities located in Syria; and
- individuals, corporations and other entities acting on behalf or upon instructions/directions of the afore-mentioned categories.

For the sake of clarity, it should here be stressed that where such claims relate to agreements, arrangements or any other matters for which an exception under the Syria Ordinance is applicable or a SECO derogation has been granted, this prohibition does not apply.

Definition of Humanitarian Purposes

There is no generally accepted legal definition of **humanitarian purposes, assistance or aid** and none provided (i) in the Syria Ordinance or (ii) in the [Federal Act on the Implementation of International Sanctions/Bundesgesetz über die Durchsetzung von internationalen Sanktionen/Loi fédérale sur l'application de sanctions internationales/Legge federale sull'applicazione di sanzioni internazionali](#) (the **Embargo Act** or **EmbA**), on whose basis the Syria Ordinance was enacted (Art. 2 EmbA).

It is however widely accepted that the definition should include a number of basic elements to ensure that certain fundamental human rights are guaranteed, thereby providing the

necessary conditions to keep people alive, healthy and safe. Humanitarian assistance should be an action triggered by extraordinary circumstances (e.g. emergencies, natural disasters or conflicts), in which the usual services are unable to operate adequately to meet the basic needs of the affected population.

We could therefore attempt to summarise humanitarian purposes as activities aimed at delivering or facilitating the delivery of life-saving assistance to those in need, including medical supplies, food, clothing, shelter and/or the transfer of humanitarian workers and related assistance.

The exact meaning or extent of the term "humanitarian purposes" (*i.e. usage, aide, but, fin, motifs humanitaire(s)*), pursuant to the Syria Ordinance, could be confirmed on a case-by-case basis with SECO.

Original Source of Humanitarian Exceptions

As mentioned above, the Syria Ordinance stems from the Embargo Act.

Art. 1 EmbA provides that the Federal Council has the authority to enact compulsory measures. The Federal Council may stipulate exceptions in order to support humanitarian activities or to safeguard Swiss interests.

Art. 2 EmbA provides that the Federal Council may stipulate exceptions in accordance with paragraph 1 above, in particular for the provision of food supplies, medicines and therapeutic products for humanitarian purposes.

The above simply serves to illustrate that although SECO is charged with applying the Syria Ordinance and granting derogations, the (Swiss) **Federal Council** has the ultimate authority to stipulate **exceptions** inter alia for **humanitarian purposes**.

Distinction between Exceptions and Derogations

For the sake of clarity, a short distinction is here made between (a) **exceptions**, which apply automatically if the criteria of the exception are met, and (b) **derogations** (or exemptions) for which a **request** must be made to SECO and the **derogation received** from SECO **before** partaking in any specific activities which would otherwise be deemed non-compliant with the Syria Ordinance (and which would remain so if SECO refuses to grant the derogation).

Absence of any SECO Guidelines to date

Although there is to our knowledge no SECO published FAQ, equivalent for example to the SECO FAQ relating to sanctions regarding the situation in Ukraine, some further information is nevertheless available for example (i) via the [SECO Press Release](#) pages or (ii) by directly contacting SECO itself.

Further applicable Sanctions Regimes

In addition to case-by-case legal advice on Swiss sanctions law, we strongly recommend seeking legal advice on the **sanctions law of any country potentially involved** in an envisaged activity, such as **for example EU, UK or US** sanctions law, inter **alia** (i) if any person or entity involved is of UK, EU or US nationality or incorporation, (ii) the territory of any such States or union is involved, (iii) products of any such States or union are involved and (iv) even if the currency of any such States or union is involved (especially if USD).

Conclusion

Given the extensive scope of the sanctions under the Syria Ordinance and the questions their application can often raise (as well as the criminal consequences a breach thereof entails pursuant to the Embargo Act), all activities, organisations 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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